481.

SUPREME COURT OF THE UNITED STATES.

No. 124.

THE TOWN OF DOVER, PLAINTIFF IN ERROR,

vs.

THE PROPRIETORS OF PORTSMOUTH BRIDGE, NATHANIEL B. MARCH, & LEWIS HAYES.

IN ERROR TO THE SUPERIOR COURT OF JUDICATURE OF THE STATE OF NEW HAMPSHIRE.

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UNITED STATES, *ss:*

The President of the United States, to the justices of the superior court of judicature of the State of New Hampshire, greeting:

[SEAL.]

Because, in the record and process, and also in the passing of the final decree in a suit which was before said court, sitting in chancery for the county of Strafford, in the first judicial district in said State, by bill in equity between the Town of Dover, complainants, and the Proprietors of Portsmouth Bridge, Nathaniel B. March and Lewis Hayes, defendants, manifest error has intervened, contrary to the Constitution and laws of the United States, to the great damage of the Town of Dover aforesaid, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fourth.

ALBERT R. HATCH,
Clerk of the circuit court of the U. S., for New Hampshire.

August 13th, 1850, allowed by

LEVI WOODBURY,
Associate just. of Sup. Court of U. States.

STATE OF NEW HAMPSHIRE.

The record and process and final decree, in the suit within mentioned, are herewith transmitted to the Supreme Court of the United States, in a transcript thereof annexed to this writ, as herein commanded.

JOHN H. SMITH,
Clerk of the superior court of judicature for the county of Strafford, New Hampshire.

[REC. CXXIV, D. T. 1851.]—1

UNITED STATES, *ss:*

The President of the United States, to the Proprietors of Portsmouth Bridge, Nathaniel B. March, of Portsmouth, in the State of [SEAL.] New Hampshire, and Lewis Hayes, of Kittery, in the State of Maine, greeting:

Whereas in the record and process, and also in the passing of the final decree, in a suit which was before the superior court of judicature of the State of New Hampshire, sitting in chancery for the county of Strafford, in the first judicial district in said State, by bill in equity between the Town of Dover, complainants, and you, the said Proprietors, March and Hayes, defendants, manifest error has intervened, contrary to the Constitution and laws of the United States, as it is said, to the great damage of the Town of Dover aforesaid, as in their complaint has been stated; the record of which decree and process we, for certain causes, have caused to be brought before our chief justice and associate justices of the Supreme Court of the United States; we, desiring that the error, if there be any, may be duly corrected, and full and speedy justice done to the parties aforesaid, cite, warn, and admonish you, that you be before our said chief justice and associate justices of the Supreme Court of the United States, to be holden at Washington, being the seat of the National Government, on the first Monday of December next, to hear the record and process aforesaid, if you think it expedient; and further to do and receive that which the same court shall consider in this behalf.

Witness Roger B. Taney, esquire, chief justice of the Supreme Court of the United States, at said Washington, this thirteenth day of August, in the year of our Lord one thousand eight hundred and fifty.

Attest: LEVI WOODBURY,
Associate just. of Sup. Court of U. States.

I, Geo. W. Towle, deputy marshal, United States, for the district of New Hampshire, make oath and say, that, on the fifteenth day of August, A. D. 1850, I showed the within citation to Sarah M. Hayes, wife of the within named Lewis Hayes, at his dwelling-house in Kittery, the said Lewis Hayes being then absent, and at the same time left with her, at said dwelling-house, a true copy thereof, and a copy of the assignment of errors in said cause, certified to by C. W. Woodman, attorney for plaintiffs in error; and on the same day I showed to Abigail Hundel, the housekeeper for the within named Nathaniel B. March, at the dwelling-house of said March, he being then absent, the within citation, and also left with her, at said dwelling-house, a true copy thereof, and a copy of the assignment of errors in said cause, certified to by C. W. Woodman, attorney for the plaintiffs in error; and on the same day I showed to Samuel Lord, the clerk of the Proprietors of the Portsmouth Bridge, the within citation, and on the same day gave him in hand a true copy thereof, and also a copy of the assignment of

errors, certified to by C. W. Woodman, attorney for the plaintiffs in error.

Fees.

GEO. W. TOWLE.

STATE OF NEW HAMPSHIRE,
Rockingham, ss:

August 17th, A. D. 1850, then the above named George W. Towle, personally appearing, made solemn oath that the above affidavit, by him subscribed, is just and true; before me,

ALBERT R. HATCH,
Justice of the peace, and clerk of the circuit court of the United States, for N. H.

To the honorable justices of the superior court of judicature, next to be holden at Gilmanton, within and for the county of Strafford, and State of New Hampshire, on the second Tuesday of December, in the year of our Lord one thousand eight hundred and forty.

Sitting in chancery.

Humbly complaining, sheweth unto your honors your orators, the town of Dover, a body politic and corporate within said county, that there is situate, partly within said State and partly within the State of Maine, a certain arm of the sea or river called Piscataqua river, dividing by its centre line below Bloody Point, so called, in said Dover, and as far as the ocean, the said States of New Hampshire and Maine, [*that the town of Portsmouth, in our county of Rockingham, is situate on the westerly side of said Piscataqua river, near its outlet to the sea, and below the said town of Dover; that said town of Dover is situate above said Portsmouth and above said Bloody Point, on a branch of said Piscataqua river, called the Cochecho; that said town of Portsmouth is, and long before the time of committing the grievances hereinafter set forth hath been, the sole port of entry for the district of Portsmouth, duly established by law; that said town of Dover is, and long before the time of committing the grievances hereinafter set forth hath been, a port of delivery in said district of Portsmouth, duly established by the laws of the United States; that said Piscataqua river and the Cochecho branch thereof, from the sea up the same river and branch aforesaid, as far as the landing, so called, and the wharves within said Dover hereinafter specified, are and ever have been navigable waters, where the tide ebbs and flows, and are and have been navigable for ships, schooners, boats, and other vessels; and that long before and ever since the time of committing the grievances hereinafter set forth, the same waters have been and now are navigated by ships, schooners, boats, and other vessels under the laws of the United States;*] which said river now is, and always hitherto hath been, a free and public highway for all the citizens of this State whatsoever; that the tide ebbs and flows in the same river; that the United States

have at divers times appropriated and expended large sums of money for the improvement and navigation of the Cochecho and Berwick branches of said river above said Bloody Point, by removing obstructions in the same; that the same river, prior to the committing of the grievances hereinafter set forth, was and could be easily and safely and at all times navigated and passed over by all vessels or boats of any description whatever; that divers vessels owned by inhabitants of said Dover, and duly licensed by the United States to pursue the coasting trade, do now, and until the committing of the grievances hereinafter set forth, ever have passed and still of right ought to pass, to and from the harbor of Dover aforesaid, upon and along said Piscataqua river, without let or hindrance. That said town of Dover are seized in their demesne in fee of certain wharves situate on the Cochecho branch of said river at Dover landing, so called, in said Dover, adjoining the highway, a street passing on each side of the store occupied by Nahum French, from the use of which wharves, by vessels and freight passing over said river, said town of Dover have made great gains; that said town of Dover and inhabitants thereof are and ever have been greatly advantaged and benefitted by the free and unobstructed navigation of said river; that the said town and its inhabitants ought now, and at all times hereafter, to have the free use and natural flow, current, and channel of said river, with their boats, schooners, ships, and other vessels, free from all interruption and hindrance whatsoever.

But that the Proprietors of Portsmouth Bridge, a body corporate within this State, whose place of business is at Portsmouth, in the county of Rockingham, have within twenty years last past built, and still continue and keep up across said river, between said town of Portsmouth and Kittery in the State of Maine, and below said Bloody Point, [*and across the waters of said Piscataqua river, within the port and harbor of Portsmouth aforesaid, where the said river is navigable for vessels of the largest class, and between said wharves in said Dover and the sea,*] a certain bridge, without right, which bridge greatly obstructs the navigation of said river, is destructive of life and property, and is a great public nuisance to said town of Dover, and its inhabitants and other citizens of the State, who have occasion to pass over the said river. That the said Proprietors of Portsmouth Bridge, by Nathaniel B. March, of said Portsmouth, gentleman, their authorized agent, have lately entered into a contract with Lewis Hayes, of said Kittery, yeoman, for filling up a large portion of the channel of said river situate in this State, at and near the bridge aforesaid; and the said Hayes hath agreed with the said Proprietors of Portsmouth Bridge and said March, to throw over and sink in said river, near the said bridge, and within this State, large quantities of stones and rocks, so as to fill up the channel of said river at that place, in pursuance of which agreement said Hayes has already sunk and deposited in said river, at said bridge as aforesaid, and within this State, upwards of fifteen hundred tons of stones and rocks; and the said Hayes, in pursuance of said agreement and said March, and the said Proprietors of Portsmouth Bridge, threaten and intend and design shortly to sink and deposit, at and

near said bridge, in the channel of said river, within this State, as aforesaid, other and much greater quantities of stones and rocks; that the same rocks and stones, when so sunk and deposited, can never be removed from the bed and channel of said river; that by means of said bridge, and by the sinking and depositing of such quantities of rocks and stones as aforesaid, the navigation of said river has already become difficult, hazardous, and destructive to life and property; that by the sinking and depositing of such vast quantities of rocks and stones as aforesaid, designed and intended hereafter to be sunk and deposited, the said river must and will be necessarily and unavoidably still farther difficult, hazardous, and destructive to life and property, and be obstructed and rendered inconvenient and unsafe for said town of Dover, and its inhabitants and the citizens of this State having occasion to use the same; and the navigation of said river, between the harbor of Dover aforesaid and the harbor of Portsmouth aforesaid, will thereby be wholly destroyed, the said river becoming swifter and more impetuous in its current, and narrower and shallower in its channel; all which will be to the public damage and nuisance of your orators, and all other persons residing near said river; and your orators will not have the use and enjoyment of said river and said wharves in so beneficial a manner as they have hitherto been accustomed and ought to have; and your orators have frequently applied to and requested the Proprietors of Portsmouth Bridge and said March and Hayes to remove said bridge, and to desist from and not to proceed in filling up the channel of said river as aforesaid; and your orators well hoped that no disputes would have arisen touching the same river and the obstructing the navigation of the same, but the Proprietors of Portsmouth Bridge aforesaid, and said March and Hayes, would have complied with the request of your orators as aforesaid, as in conscience and equity they ought to have done. But now, so it is, may it please your honors, that the said defendants, combining and confederating together, and with divers persons at present unknown to your orators, whose names, when discovered, your orators pray they may be at liberty to insert herein, with apt words to charge them as parties defendants hereto, and contriving how to wrong and injure your orators in the premises, they, the said Proprietors of Portsmouth Bridge, and said March and Hayes, absolutely refuse to comply with such requests.

Amendment.

"And they pretend that said corporation, called the Proprietors of Portsmouth Bridge, are permitted and empowered to erect said bridge by an act of the legislature of New Hampshire, passed in the year 1819, and also by an act of the legislature of the State of Maine, passed in the year 1821, each of said acts being entitled "An act to incorporate the Proprietors of Portsmouth Bridge," and that by each and either or both of said acts the right of building and maintaining a bridge across said Piscataqua river, between said towns of Portsmouth and Kittery, was fully granted to said corporation, and that they have built

and do keep up said bridge in conformity with the requirements of said acts: Whereas your orators charge and insist that the said acts were for purposes of intercourse and commerce between said States; and that said intercourse and commerce to be carried on over and by way of the said bridge or bridges therein respectively mentioned is charged by the provisions of said acts with certain tolls or duties therefor, payable to the Proprietors; and so it will appear when said acts shall be produced.

And your orators further charge and insist, that at and long before the time of the adoption of the Constitution of the United States, there were in each and every of the thirteen States then forming this Union, a port or ports of entry and delivery, with havens and harbors, established, recognised, and known in law for the carrying on and regular conducting the trade of said States, respectively, with foreign nations, and coastwise with each; among which ports so known and established, said Portsmouth with its haven or harbor was one.

That by said Constitution it is declared, that one object thereof is to provide for the common defence.

That Congress shall have power to lay and collect duties and imposts; to provide for the common defence and general welfare of the United States; to regulate commerce with foreign nations and among the several States; to define and punish offences against the law of nations; to provide and maintain a navy; to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof: That no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: That no State shall enter into any treaty, alliance, or confederation; nor without consent of Congress lay any duties on imports or exports, (except what may be absolutely necessary for executing its inspection laws;) keep troops or ships of war in time of peace; enter into any agreement or compact with another State; or engage in war unless actually invaded, or in such imminent danger as will not admit of delay: That the United States shall protect each of the States against invasion; that the Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding. And your orators further charge and insist, that by force of the statutes of the United States for regulating commerce with foreign nations and the coasting trade between the several States, and also for the collection of duties on imports and tonnage, the natural current and channel and flow of the navigable waters between the sea and the respective ports thereby established, with their harbors and inlets, ought at all times to be open and unobstructed, unimpeded, and free from any artificial or intended obstacle, erection, or annoyance whatever.

That the laws of Congress establishing ports of entry and delivery

are a regulation of commerce as well as means of collecting revenue. They look also to the relations of the United States with foreign nations as well in war as in peace; to the preservation of peace and amity with them; to the stipulations of treaties; to the duties of humanity and hospitality to strangers; to the benefit of refuge and asylum for mariners in distress, of whatever nation; to the fitting out, receiving, harboring, stationing, mooring, and sheltering public ships of war; and to the protection and defence of the country, as well as to the convenience of navigation and commerce and the collection of revenue: That the establishment of seaports does necessarily involve and include the admission of all ships and vessels of every description which may be allowed to trade in them from the sea, or which by the laws, treaties, or Government of the United States may be authorized or permitted to come into such ports, and the right to the free and unobstructed use of the navigable waters, and of all natural facilities of navigation, passage, and access of such vessels to and from such ports, their havens, waters, and shores, and every part thereof, from and to the sea; without the interposition of any hindrance, impediment, or annoyance whatever, not expressly authorized by the Constitution or laws of the United States, or necessary in the administration and course of justice. And your orators also further charge and insist, that by the general principles of public and international law, the inhabitants of contiguous independent States and territories bordering on a navigable river, or arm of the sea running between them, of common right, are, on each side, entitled to the free and common use of such navigable waters, for their ships and vessels to sail and pass over, through the whole breadth of such waters, or at least so far as may be necessary or useful for purposes of navigation; and as may not injure or annoy either State or its people: and accordingly it is usual and often practised to secure, regulate, and limit such use by treaty or compact of such States; and that neither State can rightfully hinder, obstruct, or in any way impede or annoy, such common use and navigation without the consent of the other.

And your orators charge and insist that neither of said acts, whether of New Hampshire or Maine, could, without a violation of public law, sanction the erection of any structure or works to interrupt or obstruct the common navigation of said Piscataqua river, even within its own territorial jurisdiction, much less to extend across and land on the opposite bank, without the agreement of the other State; and whatever effect said acts or either of them may have as an authority for said structure of said bridge, it is as an agreement or compact between said States, which, not having the consent of Congress, said acts are therefore, and for the other reasons aforesaid, utterly void and of no validity for that purpose, being repugnant to and in conflict with the Constitution of the United States, and the laws and treaties thereof made pursuant thereto."

All which actings, doings, pretences, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises. In consideration whereof, and foras-

much as your orators can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said Proprietors of Portsmouth Bridge may, upon the corporal oath of the officers of their corporation, and the said March and Hayes and their confederates, when discovered, may, upon their several and respective corporal oaths, to the best and utmost of their several respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto; and more especially that the said confederates may, in manner aforesaid, answer and set forth—

1. Whether the said Proprietors of Portsmouth Bridge have not erected, and do not still maintain, a bridge across said river between said Portsmouth and Kittery; and if so, describe said bridge particularly.

2. Whether the same bridge does not obstruct the navigation of said river.

3. Whether packets, boats, gondolas, schooners, steamboats, and ships can pass over said river, through and under said bridge, at all times of the tide, as easily and freely as they could before the erection of said bridge.

4. Whether it is possible for the largest class of vessels and steamboats that have frequented, and do frequent, said harbor of Portsmouth, to pass through said bridge.

5. Whether the same largest class of vessels and steamboats could not pass easily, safely, and freely up said river to Bloody Point aforesaid, if the said bridge was wholly removed; and if not, for what reason could they not so pass.

6. Whether said March is not the agent of the Proprietors of Portsmouth Bridge aforesaid.

7. Whether any contract has been made by said March, or any other person with said Hayes, or any other person or persons, to sink and deposit, at or near said bridge, in said river, within this State, large quantities of rocks and stones as aforesaid; and if so, state said contract, and the parties to the same, and when it was entered into, and with what intent.

8. Whether they have taken any measures for filling up said river or any part thereof within this State, at or near said bridge; and if so, what.

9. Whether they intend and design to sink and deposit any rocks or stones in said river, within this State, at or near said bridge; and if so, how much, where, and in what mode, and for what purpose.

And that the said defendants, their servants and workmen, may be forever hereafter restrained, by the injunction of this honorable court, from so sinking and depositing any rocks or stones in said river within this State, and filling up the same, and obstructing the navigation thereof, and from further keeping up and supporting said bridge; and that

your orators may have such further and other relief in the premises as the nature and circumstances of this case may require, and to your honors shall seem meet. May it please your honors to grant unto your orators, not only your honors' most gracious writ of injunction, issuing out of and under the seal of this honorable court, to be directed unto the said Proprietors of Portsmouth Bridge and said March and Hayes, to restrain them, their servants, workmen, and agents, from sinking and depositing any rocks or stones at or near said bridge in said river within this State, and in any way or manner obstructing the navigation of said river, but also the most gracious writ of subpœna of the State of New Hampshire, to be directed to the said Proprietors of Portsmouth Bridge, said March and Hayes, and the rest of the confederates when discovered, thereby commanding them and every of them, at a certain day and under a certain pain therein to be specified, to be and appear in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such further order, direction, and decree therein, as to this honorable court shall seem meet. And your orators shall ever pray, &c.

November 21, A. D. 1840.

JOHN RILEY,
STEPHEN TOPPAN,
SHARENTON BAKER,
Selectmen of Dover.
CHS. W. WOODMAN,
Solicitor for the town of Dover.

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

Superior court of judicature, clerk's office. Received and filed this twenty-third day of November, A. D. 1840.

Attest: F. COGSWELL, *Clerk.*

STRAFFORD, *ss:*

Superior court of judicature, Dec. term, 1840.

The TOWN OF DOVER
vs.
The PROPRIETORS OF PORTSMOUTH BRIDGE & als. } In equity.

And the said Town of Dover prays leave to amend their original bill in the above entitled cause, as follows, insert in the first clause after the words "States of New Hampshire and Maine," and before the words "which said river," these words, viz:

"That the town of Portsmouth, in our county of Rockingham, is situate on the westerly side of said Piscataqua river, near its outlet to the sea, and below the said town of Dover; that said town of Dover is situate above said Portsmouth and above said Bloody Point, on a branch of said Piscataqua river, called the Cochecho; that said town of Ports-

mouth is, and long before the time of committing the grievances hereinafter set forth hath been, the sole port of entry for the district of Portsmouth, duly established by law; that said town of Dover is, and long before the time of committing the grievances hereinafter set forth hath been, a port of delivery in said district of Portsmouth, duly established by the laws of the United States; that said Piscataqua river and the Cochecho branch thereof, from the sea up the same river and branch aforesaid, as far as the landing so called, and the wharves within said Dover hereinafter specified, are and ever have been navigable waters, where the tide ebbs and flows, and are and have been navigable for ships, schooners, boats, and other vessels; and that long before and ever since the time of committing the grievances hereinafter set forth, the same waters have been and now are navigated by ships, schooners, boats, and other vessels, under the laws of the United States." And the said Town of Dover prays for leave further to amend said bill as follows: Insert after the words "and Kittery, in the State of Maine, and below said Bloody Point," and before the words "a certain bridge," these words, viz., "and across the waters of said Piscataqua river, within the port and harbor of Portsmouth aforesaid, where the said river is navigable for vessels of the largest class, and between said wharves in said Dover and the sea."

By CHS. W. WOODMAN,
Solicitor for the Town of Dover.

GRAFTON, *ss:*
Superior court of judicature, July term, 1841.

The foregoing amendment is allowed, subject to exceptions.
J. PARKER.

I received a copy of the above amendment Aug. 7, 1841.
I. BARTLETT.

Strafford superior court of judicature. December term, 1840.

The TOWN OF DOVER, complainants,
vs.
The PROPRIETORS OF PORTSMOUTH BRIDGE, Nath'l B. March and Lewis Hayes, defendants. } In chancery

Answer of the Proprietors of Portsmouth Bridge, and of Nath'l B. March and Lewis Hayes, to the bill of complaint of the said Town of Dover.

The said Proprietors of Portsmouth Bridge, now and at all times, saving and reserving to themselves all benefit and advantage or exception which can or may be had to the many errors, insufficiencies, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as

these defendants are advised is material or necessary for them to make answer unto, they answer and say: That there is situated, partly within said State of New Hampshire, and partly within the State of Maine, a certain arm of the sea, or river, called Piscataqua river, dividing by the middle of said river, below Bloody Point so called, in said Dover, as far as the ocean, the said States of New Hampshire and Maine; that said river is and always has been navigable for boats and vessels; that the tide ebbs and flows in said river.

And the defendants further answer and say, that they have been informed, and believe, that the United States have at divers times expended sums of money for the improvement and navigation of the Cochecho and Berwick branches of said river, above said Bloody Point, by removing obstructions in the same.

And the said defendants further answer and say, that they admit that said river Piscataqua was and would be easily, and at all times, navigated and passed over by all boats and vessels for ordinary use up said river to near the place called Bloody Point; but the said defendants do deny that the branch of said river called the Cochecho, above said Bloody Point, is navigable for boats or vessels of any description so far as the place called Dover landing at low water, but they do admit that at high water the said Cochecho is navigable up to said Dover landing for boats, gondolas, and vessels of a small size; and that divers small vessels, licensed by the United States to pursue the coasting trade, and owned by the inhabitants of said Dover, have passed, and still do pass, up and down said river at such times as the tide permits, to and from said Dover landing to the harbor of Portsmouth and elsewhere; and the said defendants further answer and say, that whether the said Town of Dover are seized in their demense as of fee of certain wharves, situated on the Cochecho branch of said river at Dover landing, as stated in said complainants' said bill, they have no knowledge or information other than the complainants' statement in their said bill; and that whether the said Dover and the inhabitants of said Dover are and have been greatly advantaged and benefitted by the free and unobstructed navigation of said river, they have no knowledge.

And the defendants further answer and say, that from the early settlement of the country there has been and still is a public highway over and across said river Piscataqua, between the towns of Portsmouth, in New Hampshire, and Kittery, in the State of Maine. The same is, and for a long time has been, the great and main road for the conveyance of the principal mails of the United States; and that up to the year A. D. 1819, the said river was crossed as aforesaid by said road, by means of ferry boats plying between said Portsmouth and Kittery, and that said highway was of great importance to the welfare and accommodation of the citizens of the State of New Hampshire, Maine, Massachusetts, and other parts of the United States; that the crossing of said river by means of ferry boats was inconvenient, expensive, and, owing to the rapidity of the tides, and the ice at some seasons of the

year, was dangerous to the lives of persons so having occasion to use said highway and ferry.

And the defendants further answer and say, that the public convenience and interest require that a bridge should be erected across said river between said Portsmouth and Kittery, for the accommodation of the travellers upon said highway, and for the more safe and expeditious conveyance of the mails of the United States; and divers persons, to wit, Edward Cutts, Jeremiah Mason, John Langdon, Nathaniel A. Haven, James Sheafe, John F. Parrott, Thomas Haven, William Rice, Henry Ladd, and others, their associates, petitioned the general court of New Hampshire for liberty to build a bridge between the towns of Portsmouth, in New Hampshire, and Kittery, then in the commonwealth of Massachusetts, now in the State of Maine, across said Piscataqua river, and for an act of incorporation for that purpose. And the legislature of New Hampshire, by an act passed on the twenty-eighth day of June, A. D. 1819, entitled "an act to incorporate the Proprietors of Portsmouth Bridge," a copy of which act is hereunto annexed and made part of this answer, did incorporate the persons above named, with their associates, a body politic and corporate, by the name of "The Proprietors of Portsmouth Bridge," and therein and thereby it was enacted "that the Proprietors be, and hereby are, permitted and empowered to erect a bridge over Piscataqua river, between the said town of Portsmouth and town of Kittery, in the State (then) of Massachusetts, now of the State of Maine, and also a bridge between the main land and Ham's island, in said town of Portsmouth," and "that the right of building and maintaining a bridge across said river Piscataqua, commencing at any place on the margin of said river between Rindges' wharf in said Portsmouth, and the town of Newington, be and the same is hereby fully granted to said Proprietors." A copy of said act, entitled an act to incorporate the Proprietors of Portsmouth Bridge, passed by the legislature of New Hampshire, June 28th, 1819, is hereto annexed, marked A, and made a part of this answer.

And the said defendants further answer and say, that at a meeting of the Proprietors named in said act, and their associates duly notified, agreeably to the provisions of the same, on the eighth day of January, A. D. 1821, the said Proprietors accepted the same, and duly organized said corporation.

And the defendants further answer and say, that on the same day the said corporation voted that a petition be forwarded to the legislature of the State of Maine, for leave to build a bridge agreeably to the act of incorporation granted in New Hampshire, and there afterwards, in the same month of January, such petition was presented to the legislature of the State of Maine, and on the twenty-third day of January, A. D. 1821, an act was passed by said legislature, entitled "an act to incorporate the Proprietors of Portsmouth Bridge," whereby and in which the Proprietors before named in the act of incorporation passed by the legislature of New Hampshire, and their associates, were permitted and empowered to erect a bridge over Piscataqua river, between

the towns of Kittery or Eliot, in the State of Maine, and Portsmouth, in the State of New Hampshire, and that the right of building and maintaining said bridge across said river, between the towns aforesaid, was thereby fully granted to said corporation. A copy of said act of the legislature of the State of Maine, entitled "an act to incorporate the Proprietors of Portsmouth Bridge," is hereunto annexed, marked "B," and made a part of this answer.

And the defendants further answer and say, that at a meeting of the Proprietors of Portsmouth Bridge, named in said act, and their associates, duly notified and holden on the twenty-ninth day of January, A. D. 1821, the said Proprietors accepted said act of incorporation passed by the legislature of the State of Maine.

And the defendants further answer and say, that thereafterward said Proprietors paid to Alexander Rice, esquire, four thousand dollars as compensation for the injury sustained by the said Rice in the loss of the income of the ferry, from said Kittery to Portsmouth, in pursuance of the provision of said last named act.

And the defendants further answer and say, that during the summer of the year A. D. 1822, the Proprietors of Portsmouth Bridge, in pursuance of the power vested in them by the aforesaid acts of the legislature of New Hampshire; and of the legislature of Maine, and agreeably to the provisions of the same, did erect and complete said bridge from the main land in Portsmouth, north of Rindge's wharf, to Ham's island, and from said Ham's island, across said Piscataqua river, to Kittery, in the State of Maine; which said bridge the said Proprietors have sustained and kept in repair for the accommodation of the public travel, and still sustain and keep the same in repair for said purpose, subject to the tolls authorized by said act.

And the defendants further answer and say, that said bridge proves to be of great public convenience and utility in the accommodation of the citizens of Maine and New Hampshire, and of other parts of the United States, who have occasion to cross said river, and also in giving security and facility to the conveyance of the mails of the United States.

And the defendants further answer and say, that in addition to the greater convenience, speed, and safety to travellers in crossing said river upon said bridge, the tolls exacted in all cases for passing the same are but one-half the sum which was paid in like cases for crossing the river by said ferry boats before the erection of said bridge, and that the number of travellers, teams, and coaches which now pass said bridge is very great, and constantly increasing; and that, of stage coaches alone, the average number which now pass over said bridge is from eight to ten each day.

And the defendants further answer and say, that in the erection of said bridge said Proprietors expended the sum of about forty thousand dollars, and that in maintaining and repairing, and in improvements of the construction of said bridge since its erection, they have expended the further sum of about thirty thousand dollars more, making in the

whole an expenditure upon said bridge of the sum of seventy thousand dollars.

And the defendants further answer and say, that the length of said bridge, from the main land in Portsmouth to Ham's island, is five hundred feet in length, and that this portion of the bridge is constructed with a convenient draw or hoist, for vessels to pass and repass, of such width as is convenient for the largest merchant vessels which have ever yet been in the harbor of Portsmouth. And the length of said bridge, from said Ham's island to the Kittery shore, is seventeen hundred and fifty feet; and from the bottom of the channel of the river is, in some portions of the same, nearly seventy feet in height; that the same rest upon parts framed into what are called sections of piers, driven into the bottom of the river.

And the defendants further say, that the bridge was originally constructed with a draw or hoist over the channel of the river, of sufficient width for vessels to pass and repass freely, and with two good and sufficient piers made, the one placed above the bridge, and the other below the bridge, and so connected with the bridge as to make it convenient for vessels to make fast to, and moor, until wind and tide admit of such vessel so made fast to pass through the draw free of expense. And the said proprietors have caused the same to be hoisted or opened without delay for the accommodation of all such vessels as have occasion to pass through the same, and for which the hoisting or opening said draw was necessary, and still continue and hold themselves in readiness so to do.

And the defendants further answer and say, that said bridge was so constructed that open boats and gondolas were enabled to pass under said bridge, at least in one place, exclusive of the draw, and which passage way was of sufficient height and width for said boats and gondolas to pass with safety, and with as little obstruction as possible, at all times of tide; and that the draw or hoist, and said open passage way so as aforesaid, have been continued and still remain in said bridge; and for the safety of the lives of those who are or may be concerned in the navigation of said river, the said bridge at all times has been, and still is, provided with at least four lamps, which at all times have been, and still are, well supplied with oil, and constantly lighted during the night time.

And the defendants further answer and say, that an arch was constructed, and is still maintained in said bridge, in a convenient place, and of sufficient dimensions to permit all boats, gondolas, and small craft, freely to pass under the same. And that a plan of the same was submitted to and approved by the justices of the superior court before said bridge was erected.

And the defendants further answer and say, that said draw or hoist, as originally constructed, was of the width of thirty-three feet, and the said arch or open space, exclusive of said draw or hoist, was of the width of fifty feet.

And the defendants further answer and say, that in the year A. D.

1826, that some of the citizens of Dover, and others residing upon the branches of said Piscataqua river, above said bridge, requested the Proprietors thereof so to alter the construction of the same, as to give greater facilities for passing and repassing upon said river, through and under the same; and thereupon the said Proprietors did forthwith alter and widen said arch to the width of seventy feet; and did, between said arch and the draw or hoist in said bridge, make two other open spaces for the passage of boats and other craft, of seventy feet in width, and expended the sum of four thousand dollars in making such alterations, at the request, and for the better accommodation, of persons navigating said river.

And the defendants further answer and say, that for the greater accommodation of vessels passing and repassing through said bridge, in the summer of A. D. 1835, between Ham's island and Kittery, the Proprietors caused the draw or hoist in that part of said bridge to be enlarged to the width of forty feet; and also caused a buoy, with a heavy anchor and chain cable, to be placed above said bridge, near said draw, for the use and accommodation of vessels so passing and repassing said bridge; and expended in said alterations and improvements the further sum of fifteen hundred dollars, which included the expense of a new wharf to the draw.

And the defendants further answer and say, that for the greater accommodation of vessels passing and repassing through said bridge, in the summer of A. D. 1838, they caused the draw or hoist in that part of the bridge, between the main land in Portsmouth and Ham's island, to be enlarged to the width of thirty-eight feet, and expended on said alterations the sum of eight hundred dollars in fixing the said bridge.

And the said defendants further answer and say, that the width of that portion of the river between the main land in Portsmouth and Ham's island, where the bridge crosses, at low water, is about three hundred and fifty feet, and at high water its width is about five hundred feet; and the breadth of said river, from said Ham's island to Kittery, where the main bridge is erected, is, at low water, about thirteen hundred feet, and at high water it is seventeen hundred and fifty feet; and that the average ebb and flow of the tides at said place is about eight feet.

And the defendants further answer and say, that the width of said river, at about one mile northerly of said bridge, in the direction of Dover, is no more than six hundred and fifty feet.

And the defendants further answer and say, that the plan of said bridge, and the part of the river and the adjacent localities represented upon the same, is a true and correct plan, and exhibits the present form and position of said bridge, with the position of the river and bridge west and south of Ham's island, and the form of the bay and river above and below the main bridge; and that the figures marked at the different sections of said bridge represent the true depth of waters

at the *the* same, at the average high-water mark, which said plan is hereunto annexed and made part of this answer.

And the defendants further answer and say, that said bridge does necessarily somewhat obstruct the navigation of said river, and that packets, boats, gondolas, schooners, steamboats, and ships cannot pass through and under said bridge, at all times of tide, as easily and freely as they could do before the erection of said bridge.

And the defendants further answer and say, that the passage up and down said river of vessels through said bridge, does necessarily somewhat obstruct the free and easy passage of travellers upon said public highway on and over said bridge; but that the said Proprietors have so constructed said bridge, and so promptly managed and opened the draw or hoist of the same, as to subject vessels passing through said bridge, and travellers passing over the same, to the least possible inconvenience or delay.

And the said defendants further answer and say, that the draws or hoists in said bridge being forty feet in width, are of sufficient dimensions to admit vessels of one thousand tons to pass and repass freely through said bridge.

And the defendants say, that they have no knowledge that any vessels of a larger size than one thousand tons have ever frequented the harbor of Portsmouth, except vessels of war, which come to the United States navy yard, about one mile below said bridge.

The defendants further answer and say, that they have been informed and believe, that steamboats have frequented the harbor of Portsmouth, of a size and construction so large and wide that they could not pass through said bridge; and that without said bridge, vessels and steamboats of the largest size that have frequented the harbor of Portsmouth, might have passed up said river to near Bloody Point, so called, if there were an occasion so to do; but the defendants further say that they have never known or heard of their so passing up to said Bloody Point before said bridge was erected, or of attempting to do so since the same was erected.

And the defendants further answer and say, that vessels and steamboats can freely pass and repass through the draws or hoists of said bridge, of a size much larger than can at any stage of the tide navigate Cochecho river up to, or near, or within several miles of Dover landing, where the complainants allege that they own and occupy wharves as aforesaid.

And the defendants further answer and say, that the distance from one abutment of said bridge to the other is so great, and the depth of water so great, it being at high water fifty to sixty feet deep in some places, that they find great difficulty in making said bridge secure against the force of the current and tide, and ice; that in some parts of the bed of said river the same has washed away from the piles upon which the bridge rests; and at other places, the bottom being very hard and flinty, piles could not be driven more than one or two feet, so that the same have become loose and insecure at the bottom, and the said

bridge become liable to be destroyed, and that in fact the top of the bridge so rendered insecure at a point near the centre of the channel, and about seven hundred and fifty feet from the New Hampshire shore at Ham's island, the top of said bridge was removed near seven feet from the direct line in which it was originally constructed, and the said Proprietors, to save said bridge from being destroyed, and to keep up and maintain the same according to the provisions and obligations of their charter, were advised that they should cause stones to be thrown into said river at said point under said bridge, so as to secure the same from being further removed.

And they further answer and say, that the said Proprietors did thereupon direct Nathaniel B. March, who is their agent, to cause a sufficient quantity of stones and rocks to be thrown into said river under the bridge at the point before named, so as to fasten and secure the piles and piers of the bridge as aforesaid.

And the defendants further answer and say, that said March, on the 18th day of August, A. D. 1840, contracted with said Lewis Hayes to procure and throw into the river under said bridge, at the points before designated, one thousand tons of stone, to fasten and secure the posts of said bridge.

And the defendants further answer and say, that in pursuance of said contract said Hayes, in the summer of A. D. 1840, did procure and throw into the river under said bridge, for the purpose aforesaid, six hundred and ninety tons of rock and stone, which answering the present purpose of securing the posts of said bridge, the said Hayes forebore to complete said contract, and the same has been released and discharged.

And the defendants further answer and say, that the intent of said contract with said Hayes, was by what they deemed the most practical mode, and one that, in their judgment and belief, could do no possible injury to any persons or interest whatever, to fasten and secure said bridge, to render the same permanent and safe for the accommodation of the great public travel over the same; and the defendants further answer and say, that should it become necessary in the judgment of skilful and experienced engineers and architects, for the preservation and maintenance of said bridge so to do, it is their design further to deposit stones and rocks at the point before designated to construct a stone pier to support that point of said bridge.

And the defendants further say, that the construction of a stone pier at the point above designated in said bridge, should the same become necessary for its support and maintenance, is so far distant from the arch and the draw in said bridge where vessels pass, and such is the great width for the passage of the water of said river between said Ham's island and the western shore, and between said Ham's island and the shore in Kittery, that, as these defendants are informed and believe, such stone pier would form no obstruction; that the bridge does not now create and produce no effect whatever upon the present

ease and facility of navigating said river. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged. Without this, that there is any other matter, cause, or thing, in the said complainants' said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby answered, confessed and avoided, traversed or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are willing to aver, and maintain, and prove, as this honorable court shall diect, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

Portsmouth, December 5th, 1840.

EDW. CUTTS,
A. W. HAVEN,
SAMUEL LORD,
ALEX'R LADD,
WILLIAM STAVERS,
NATH'L B. MARCH,
} *Directors.*
LEWIS HAYES,
ICHABOD BARTLETT,
Counsel for defendants.

STATE OF NEW HAMPSHIRE,
Rockingham, ss:

PORTSMOUTH, *December* 28, 1840.

Personally appeared before me the above named Edward Cutts, Alfred W. Haven, Samuel Lord, Alexander Ladd, William Stavers, Nathaniel B. March, and Lewis Hayes, and made solemn oath, that the answers given by them in the foregoing instrument *is*, to the best of their knowledge and belief, true.

J. F. SHORES, *Notary Public.*

STATE OF NEW HAMPSHIRE.

In the year of our Lord one thousand eight hundred and nineteen.

An act to incorporate the Proprietors of the Portsmouth Bridge.

Preamble. Whereas a bridge over the Piscataqua river, between the town of Portsmouth, in this State, and Kittery, in the State of Massachusetts, would be of great public utility; and whereas Edward Cutts, Jeremiah Mason, John Langdon, Nathaniel A. Haven, James Sheafe, John F. Parrott, Thomas Haven, William Rice, Henry Ladd, and others, their associates, have petitioned the general court for liberty to build the same, and to be incorporated for that purpose: Therefore,

Name and style. Sec. 1. Be it enacted by the senate and house of representatives in general court convened, That the persons above named, with their associates, who are or shall become proprietors in said bridge, so long as they shall continue proprietors thereof, shall be

a body politic and corporate for the purpose aforesaid, by the name of the Proprietors of Portsmouth Bridge, with power to purchase and hold such estate as may be necessary to carry into effect the object of said corporation, with all the powers and privileges, and subject to all the liabilities, incident to corporations of similar nature.

Sec. 2. And be it further enacted, That Edward Cutts, Jeremiah Mason, John F. Parrott, William Rice, and Thomas Haven, or any three of them, may call a meeting of said corporation by advertisement in the New Hampshire Gazette, to be holden at any suitable time and place, after seven days from the first publication of said advertisement, and the Proprietors by a vote of the majority of those present at such meeting, shall choose a clerk, and at the same, or any subsequent meeting, may elect such other officers, and establish all such rules and by-laws as may be necessary for the regulation and government of said corporation, and for carrying into effect the objects of the same; provided said rules and by-laws be not repugnant to the constitution and laws of this State.

Sec. 3. And be it further enacted, That the Proprietors be, and hereby are, permitted and empowered to erect a bridge over Piscataqua river, between the said town of Portsmouth and town of Kittery, in the State of Massachusetts, and also a bridge between the main land and Ham's island, in said town of Portsmouth.

Sec. 4. And be it further enacted, That the right of building and maintaining a bridge across said river Piscataqua, commencing at any place at the margin of said river, between Rindge's wharf in said Portsmouth, and the town of Newington, be, and the same is hereby, fully granted to said Proprietors.

Sec. 5. And be it further enacted, That when said bridge shall be made passable for travellers, the said Proprietors shall exhibit to the justices of the superior court of judicature an account of the sums expended for the same, upon the exhibition of which the said justices of the superior court shall be authorized and required to establish the rates of toll to be received by said Proprietors for the use of said bridge; which rates of toll the said justices may alter at such times as they may deem expedient.

Sec. 6. And be it further enacted, That said Proprietors shall be authorized to demand and receive, from each and every person who shall pass over or upon said bridge, such toll as shall be established by such justices of the superior court of judicature, and shall be empowered to erect gates and detain persons at said bridge until the tolls be paid for which they may be liable.

Sec. 7. And be it further enacted, That a draw or hoist in said bridge shall be constructed over the channel of said river, of sufficient width for vessels to pass and repass freely; and the said Proprietors shall cause the same to be hoisted or opened without delay for the accommodation of all such vessels as may have occasion to pass through the same, and for which the hoisting or opening said draw may be necessary.

Sec. 8. And be it further enacted, That an arch shall be constructed in said bridge, in a convenient place, and of sufficient dimensions to permit all boats, gondolas, and small craft freely to pass under the same, a plan of which shall be exhibited to and approved by the justices of said superior court before said bridge shall be erected.

Sec. 9. And be it further enacted, That unless said bridge be erected and finished within the term of ten years, then this grant shall be void.

STATE OF NEW HAMPSHIRE.

In the house of representatives, June 22, 1819.

The foregoing bill having had three several readings, passed to be enacted.

Sent up for concurrence.

MATTHEW HARVEY, *Speaker.*

In the senate, June 28, 1819.

The foregoing bill was brought up, read a third time, and enacted.

JONATHAN HARVEY, *President.*

June 28, 1819, approved.

SAMUEL BELL, *Governor.*

STATE OF MAINE.

In the year of our Lord one thousand eight hundred and twenty-one.

An act to incorporate the Proprietors of Portsmouth Bridge.

Whereas the State of New Hampshire, by an act of the legislature of the same, passed on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and nineteen, entitled an act to incorporate the Proprietors of Portsmouth Bridge, did make and constitute Jeremiah Mason, Edward Cutts, and others, their associates, a body politic and corporate, for the purpose of building a bridge over the Piscataqua river; and whereas the commonwealth of Massachusetts, by an act of the legislature of the same, passed in the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and twenty, did make and constitute Samuel Laighton, Isaac Lyman, Mark Dennett, and others, their associates, a body politic and corporate, by the name of the Proprietors of Portsmouth Bridge; and whereas the management of the concerns of two corporations in carrying the said object into effect, will be attended with inconvenience and difficulty; and whereas the corporation created by said act of Massachusetts have provisionally voted not to accept the same, therefore,

Sec. 1. Be it enacted by the senate and house of representatives in legislature assembled, that Jeremiah Mason, Edward Cutts, John Langdon, Nath'l A. Haven, James Sheafe, John F. Parrott, Thomas Haven, William Rice, and Henry Ladd, with their associates, named

in the act aforesaid of the State of New Hampshire, by the name of the Proprietors of Portsmouth Bridge, and Samuel Laighton, Isaac Lyman, and Mark Dennett, and others, named in the act aforesaid, of the commonwealth of Massachusetts, and their associates, who are or shall become proprietors in said bridge, so long as they shall continue proprietors thereof, shall be a body politic and corporate for the purpose aforesaid, by the name of the Proprietors of Portsmouth Bridge, with power to purchase and hold such estate as may be necessary to carry into effect the object of said corporation, and with the power to make and establish all such rules and by-laws as may be deemed necessary for the regulation and government of said corporation, and with all the other powers and privileges, and subject to all the liabilities incident to corporations of a similar nature, provided the said rules and by-laws be not repugnant to the laws of this State.

Sec. 2. Be it further enacted, that the said Proprietors of Portsmouth Bridge be, and hereby are, permitted and empowered to erect a bridge over Piscataqua river, between the town of Kittery, or Elliot, in this State, and Portsmouth, in the State of New Hampshire; and that the right of building and maintaining a bridge across said river, between the towns aforesaid, is hereby fully granted to said corporation.

Sec. 3. Be it further enacted, that a draw or hoist in said bridge shall be constructed over the channel of said river of sufficient width for vessels to pass and repass freely, and that two good and sufficient piers be made, the one to be placed above the bridge, the other below the bridge, and so connected with the bridge as to make it convenient for vessels to make fast to and moor until wind and tide will admit of such vessel, so made fast, to pass through the draw free of expense; and the said Proprietors shall cause the same to be hoisted or opened, without delay, for the accommodation of all such vessels as may have occasion to pass through the same, and for which the hoisting or opening said draw may be necessary. And the said bridge shall be so constructed that open boats and gondolas shall be enabled to pass under said bridge at least in one place exclusive of the draw, which passage shall be of sufficient height and width for said boats and gondolas to pass and repass with safety, and with as little obstruction as possible, at all times of tide; and for the safety of the lives of those who are or may be concerned in the boat navigation of said river, the said bridge shall be provided with at least four lamps, which shall be well supplied with oil, and be constantly lighted during the night time.

Sec. 4. Be it further enacted, that, for the purpose of reimbursing said Proprietors, a toll be, and hereby is, granted and established for the sole benefit of the said Proprietors, according to the following rates, to wit: for each foot passenger, three cents; for each person and horse, ten cents; for each chaise, sleigh, or other carriage of pleasure, drawn by one horse, thirty cents; for each coach, chariot, sleigh, phæton, or other pleasure carriage, drawn by two horses, sixty-five cents; for each coach, sleigh, or other pleasure carriage, drawn by four horses, seventy-five cents; for each sled, sleigh, cart, or other carriage of burden,

drawn by one horse, ten cents; for each cart, wagon, sled or sleigh, drawn by two horses, or oxen, twenty cents; and each additional beast five cents; for neat cattle, or horses, exclusive of those rode upon, or in teams or carriages, ten cents each; for sheep and swine, two cents each; and to each team one person, and no more, shall be allowed to pass free of toll; and at all times when the toll gatherer shall not attend his duty, the gate shall be left open; and the toll shall commence on the day of opening the bridge for passengers, and shall continue for the benefit of the corporation forever.

Provided, that in no case, either by virtue of this act or any concurrent or other act for the purposes herein mentioned, which is or may be enacted by the legislature of New Hampshire, shall the rates of toll, demanded and received for one passage over said bridge, exceed the rate above established.

Provided, also, that after the term of twenty years the rates of toll, established by this act, shall be subject to be altered by law; and the Proprietors aforesaid shall erect, and at all times keep at the place where the toll is collected, exposed to view, a sign or board with the rates of toll fairly and legibly written thereon; and the said corporation may, if they think proper, commute the rate of toll with any person or persons, or with any corporation, by taking of him or them a certain sum annually, which may be mutually agreed on, instead of the toll aforesaid.

Sec. 5. Be it further enacted, that a meeting of the Proprietors of Portsmouth Bridge, aforesaid, shall be holden in Portsmouth, at the office of the Fire and Marine Insurance Company, on Monday, the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and twenty-one, at eleven o'clock in the forenoon of said day; provided notice of such meeting shall be given by posting up a notification at the house of Alexander Rice, esq., in the town of Kittery, and at two public places in the town of Portsmouth, at least three days prior to the day of said meeting, signed by either of the persons named, as incorporated under this act. And, also, by publishing this act in the Portsmouth Oracle on the Saturday previous to said meeting; and the Proprietors, by a vote of the majority of those present, shall choose a clerk, and at the same or any subsequent meeting may elect such officers as may be deemed necessary for carrying into execution the object aforesaid.

Sec. 6. Be it further enacted, that unless said bridge shall be erected and finished within the term of eight years, then this grant shall be void.

Sec. 7. Be it further enacted, that after the said toll shall commence, the said Proprietors or corporation shall pay to Alexander Rice, esq., his heirs, executors, or administrators, the sum of four thousand dollars, together with interest after one year on the same from the commencement of said toll, which said sum and interest shall be paid out of the first proceeds of the bridge, by the toll collected thereon, and the payment of the same shall be in full consideration of the injury which may be sus-

tained by the said Rice by the loss of the income of the ferry from Kittery to Portsmouth, which ferry is not to be used as a public ferry after the bridge becomes passable, and while it continues so. And if said sum and interest thereon shall not be paid within one month from the time it shall be due as aforesaid, and shall have been demanded, then the said Rice or his legal representatives may have his action of debt, or other action at law, for the recovery thereof, and the corporate property, rights, and franchises of said corporation may be attached on the original writ, and taken and sold on execution, for satisfying the judgment with the cost of levying the said execution, and the expenses of sale, in the same way and manner as is now provided by law for the sale of personal property taken on execution, excepting that ten days previous notice of such sale shall be given in some public newspaper published in the town of Portsmouth aforesaid, in addition to the notice now required by law.

Provided, however, that whenever the said bridge shall cease to be passable, the privilege of the ferry shall revert to the said Rice, his heirs or assigns, as fully and in the same manner as if the said bridge had never been erected.

Provided, also, that nothing contained in this act shall be construed to prevent the repairing or rebuilding of said bridge without paying any additional sum whatever for the income of said ferry.

In the house of representatives, January 23, 1821.

This bill having had three several readings, passed to be enacted.

BENJAMIN AMES, *Speaker.*

In senate, January 23, 1821.

This bill having had two several readings, passed to be enacted.

WM. D. WILLIAMSON, *President.*

January 23, 1821. Approved. WILLIAM KING, *Governor.*

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

Received and filed January 16, 1841.

Attest: F. COGSWELL, *Clerk.*

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

Superior court of judicature. Dec. term, 1841.

TOWN OF DOVER, complainants,
vs.
THE PROPRIETORS OF PORTSMOUTH Bridge, Nathaniel B. March and Lewis Hayes, defendants.

The replication of the Town of Dover, complainants, to the answers of the Proprietors of Portsmouth Bridge, Nathaniel B. March and Lewis Hays, defendants, to the bill of complaint and amendment of the same of the above complainants.

These repliants, saving and reserving to themselves all and all manner

of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto say, that they will aver and prove their said bill and the amendment thereto to be true, certain, and sufficient in law to be answered unto; and that the said answers of said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

CHS. W. WOODMAN,
Sol. for Town of Dover.

STRAFFORD, *ss:*

Superior court of judicature. Dec. T. 1842.

THE TOWN OF DOVER
vs.
THE PROPRIETORS OF PORTSMOUTH BRIDGE and als.

It is agreed by the parties, that the testimony taken in the above cause, under the commissions to Messrs. Cogswell and Hatch, be received and used in the same way and manner as if the same had been taken within the time assigned for that purpose at the December term of this court, 1841.

I. BARTLETT, *for Def'ts,*
CHS. W. WOODMAN, *for Pl'fs.*

SUPERIOR COURT OF JUDICATURE,
Strafford, ss:

December term, 1842.

THE TOWN OF DOVER
vs.
THE PROPRIETORS OF PORTSMOUTH BRIDGE et als.

In equity.

It is ordered by the court that the amendment, made by the complainants to their bill of complaint, and allowed subject to exceptions, July term, 1841, Grafton, ss: and served upon the counsel for the defendants, Aug. 7, 1841, be allowed and admitted as an amendment to said bill of complaint, as if made on the 7th day of August, 1841.

Ordered, that this cause be set down for a hearing upon the bill, amendment, answer, replication, and proofs, at the next term of this court, in this county; and that either party have liberty, on ten days' previous notice, and submitting to the examination of the opposite party, if required, to introduce, prove, and use at said hearing any maps, charts, or documentary evidence relative or pertinent to the cause.

Ordered, that unless the parties shall, within 90 days, furnish to the court an agreed case in brief of the pleadings and an agreed abstract of the proofs, the plaintiffs shall, within the same time, furnish to the court copies of the bill, amendment, replication, and proofs taken by them; and the defendants shall, within the same time, furnish to the court copies of the answer and proofs taken by them.

J. H. SMITH, *Clerk.*

DOVER, compt.,
vs.
PORTSMOUTH BRIDGE.

The parties agree that Francis Cogswell, of Dover, and Albert R. Hatch, of Portsmouth, be appointed commissioners to take the testimony in this case. That they take the same by open commission; and that the complainant take his testimony by the first of July, and that the defendant take his testimony by the first of September. That the complainant give ten days' notice to Sam'l Lord, esq., of Portsmouth, of time and place of taking depositions, and that the defendants give same notice to Charles W. Woodman, esq., of Dover, of time and place of taking depositions.

STATE OF NEW HAMPSHIRE,
Strafford, ss:

Superior court of judicature. In chancery, Dec. term, 1841.

To Francis Cogswell, of Dover, in said county, and Albert R. Hatch, of Portsmouth, in our county of Rockingham, esquires:

Know ye, that we having full faith in your prudence and competency, have appointed you commissioners, and by these presents do authorize you, or either of you, to examine any witnesses in a cause pending in our said court, wherein the Town of Dover are complainants, and the Proprietors of Portsmouth Bridge and Nathaniel B. March and Lewis Hayes, are defendants, on oath or affirmation, to be by you administered, and to take and certify the depositions of the witnesses and return the same. Witness Joel Parker, esquire, at Dover, the sixteenth day of December, A. D. 1841.

Attest: F. COGSWELL, *Clerk.*

SUPERIOR COURT OF JUDICATURE,
Strafford, ss:

December term, 1842.

THE TOWN OF DOVER
vs.
THE PROPRIETORS OF THE PORTSMOUTH BRIDGE et als.

It is agreed by the parties that the testimony taken in the above

cause, under the commissions to Messrs. Cogswell and Hatch, be received and used in the same way and manner as if the same had been taken within the time assigned for that purpose at the December term of this court, 1841.

I. BARTLETT,
For defendants,
CHS. W. WOODMAN,
For plaintiffs.

The following depositions of Isaac A. Porter, Joseph Smith, George Piper, Sam'l Kimball, two of George Young, two of Charles Young, John T. Gibbs, Moses Paul, Archelaus Trefethen, Andrew Peirce, jr., James Wentworth, William W. Rollins, Bartholomew Wentworth, Enoch Dunn, James Dove, Paul Burley, Daniel Trefethen, Stephen Hanson, George Pendexter, Ivory Chadbourne, George Chadbourne, Paul Chapman, A. F. G. Channel, Abigail Nutter, Benjamin A. Ford, Thomas Card, Joseph Darne, Eli Cole, Charles Spinney, George Spinney, Zebulon Willey, Stephen Twombly, William L. Caverly, Moses Varney, Henry Card, Moses C. Young, and John Sayles, were taken before Francis Cogswell, esquire, and duly returned and certified by him pursuant to the foregoing commission, the counsel for both parties being present at the taking.

Isaac A. Porter, being duly and publicly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

Question by C. W. Woodman, solicitor for the Town of Dover.

1. Will you state whether or not you have ever, and if so, when, hired of the Town of Dover any of the landing lots, situate between Main street, Washington street, and Cochecho river; and if so, how long, and for what purpose?

Answer. I have hired three lots there situated; my first lease commenced in March, 1836; and I have continued to occupy said lots to the present time; I have used them principally for a lumber wharf; occasionally there has been sea manure laid on them; I paid the rent to the selectmen of Dover; the principal part of the lumber went down the river to Portsmouth and Boston.

I. A. PORTER.

Sworn July 14, 1842.

Joseph Smith, being duly and publicly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

Question by G. W. Woodman, solicitor for the Town of Dover.

1. Will you state where and how long you have resided for forty years past?

Answer. On and near Dover landing, in Dover.

2. Who during that time had the care and management and claimed the ownership of the common land adjoining the river at said land-

ing, between Main street and Cochecho river, commonly called Dover landing?

Answer. The Town of Dover.

3. Will you state whether for many years you *was* engaged in the lumber business at Dover landing, and where said lumber was placed when hauled to Dover, and to what parts it was sent?

Answer. For about forty years I was engaged in the lumber business at Dover landing; I was in the habit of putting a portion of my lumber on the town lands; it went down the river, principally to Ports mouth; some to Boston and other places.

JOSEPH SMITH.

Sworn July 14, 1842.

George Piper, being duly and publicly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

Questions by Charles W. Woodman, solicitor for the town of Dover.

1. Will you state whether you are an acting town clerk of the town of Dover, and have the books of records of said town?

Ans. I am the acting clerk of the town of Dover, and have the books of records of said town.

2. By same. Will you state whether said records, at a period upwards of thirty years since, show any exercise of control or ownership, on the part of said town, of the lots of land commonly called Dover landing; and if so, what; and are or not said landing lots situated at the head of tide water on the Cochecho river?

Ans. In the year seventeen hundred and seventy-four, and in July, seventeen hundred and seventy-five, in December, seventeen hundred [and] eighty-eight, and in March, seventeen hundred and ninety-one, at town meetings holden at those several times, votes were passed authorizing the sale of lots of land on Dover landing; and in September, seventeen hundred [and] eighty-five, at a meeting of said town, votes were passed authorizing the sale and leasing of lots on Dover landing; all which appear by the records of said town in my possession. Said landing lots are situated at the head of tide water on the Cochecho river.

3. Do you or not hold any office in the customs, under the United States, for the port of Dover; and if so, what is it?

Ans. I am deputy collector and inspector.

4. What is the class, and number, and voyages of the vessels that navigated the Cochecho river as far as Dover landing, in November, 1840, and previously?

Ans. From eight to twelve different vessels, averaging from fifty to eighty tons each, navigated Cochecho river as far as Dover landing in November, eighteen hundred and forty, and previously; and the number of their arrivals at Dover would then have amounted, as I should judge, from one hundred and fifty to two hundred per year. In addition to these there were frequent arrivals at Dover of transient vessels,

loaded with fish, lumber, &c. The voyages of the regular vessels are from Dover to Boston and back; the transient vessels go to New York, Thomaston, Mobile, &c.

5. By attorney for Portsmouth Bridge: Will you state the number of arrivals, including all classes of vessels, at Dover within the last year?

Ans. I could not state the number precisely; I have not the means in my possession. My returns at the custom-house in Portsmouth will state the number that entered. The last quarter the number entered was thirty-three. I should think that there were enough more arrived, that did not enter, to make the arrivals during the last quarter amount to fifty.

Sworn July 14, 1842.

GEO. PIPER.

Samuel Kimball, being duly and publicly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

Question by C. W. Woodman, solicitor for the town of Dover.

1. Will you state your age, residence, and occupation, since twenty-one years of age, and whether or not you have ever acted as one of the selectmen of Dover; and if so, when?

Answer. I was sixty-nine years old the fourth day of this month; have always resided in Dover; my occupation has been that of a farmer, except some thirteen or fourteen years, when I was engaged as a school teacher. I was first elected one of the selectmen of Dover in eighteen hundred [and] four, and served four years in succession; in the year eighteen hundred and twelve I was elected one of the selectmen of Dover, and served since that election ten years, making fourteen years in all that I have served in the town of Dover as a selectman.

2. When you *was* one of the selectmen, did you or not have the care and management, for the town, of the Dover landing lots, particularly those between Maine street and Washington street and the river, near and in the rear of Nahum French's store; were said lots then used by persons of the town, and for what purpose were said lots used?

Ans. When I was one of the selectmen, as aforesaid, the selectmen had the care and management for the town of the Dover landing lots, particularly those between Maine street, Washington street, and the river, near and in the rear of Nahum French's store; said lots were leased for three years at a time, and the money went into the treasury of the town. They were principally used to place lumber on by the lessees; the principal part of the lumber went down the river in gondolas. When complaints were made to the selectmen that salt mud, or marsh mud, or any other nuisance was on the lots, they caused it to be removed. The lessees wharfed up the water lots, and took the expense out of the rents, agreeably to the contract of leasing.

3. Will you state what you know relative to building of ships, brigs, and schooners, at and near Dover landing?

Ans. As far back as my memory extends, I was knowing to the

building of vessels at or near Dover landing. From that time to this vessels of different sizes have been there built; in some years three, in some years two, in some years one, and in some years none were built.

4. Previous to the building of Portsmouth bridge, did or not the farmers of Dover frequently go down the Cochecho and Piscataqua rivers in gondolas, and bring up sea-weed, rock-weed, and other sea manure from below where said bridge is, to put on and enrich their farms?

Ans. They did; I have frequently bought that kind of manure for my own farm, and once went down after it myself.

5. Did or not the business of getting said sea manure at that time require any peculiar skill in the management of the gondolas, more than what was possessed by farmers generally?

Ans. Farmers did not go without gondola men; they used to hire a skipper or captain.

6. Was or not the skipper hired to point out where the manure was to be had, as well as to manage the gondola when getting the manure?

Ans. I suspect so of course; the farmers where I live do not know where to get it.

7. Since the building of said bridge have or not the farmers gone in gondolas for said sea manure as much as before then, and if not what is the cause thereof?

Ans. I cannot tell; it is brought up now, but whether more or less I do not know; I am not in a situation to tell; gondola men call it more dangerous now than before the bridge was built.

By attorney for Portsmouth. How long is it since the last ship was built at Dover landing?

Ans. The last ship that was built here that I recollect was built by Capt. Robert Rogers, say about four years since.

SAM'L KIMBALL.

Sworn July 14, 1842.

Deposition taken before Albert R. Hatch, esq., on behalf of the complainant, and returned and certified by him pursuant to the foregoing commission as on file.

I, Benjamin Akerman, testify and say, that I am a native of Portsmouth, where I have always resided; I have for many years occasionally practised surveying there and in the vicinity, and have formerly surveyed several tracts or parcels of land on the shores of Piscataqua river in said town, from the minutes of which, and plans preserved by me, and now in my possession, and other surveys and admeasurements recently made by me, I have constructed the plan of part of Piscataqua river, shewing the situation of Portsmouth bridge, which is here now exhibited, signed by this deponent. The said plan, so far as it extends, is a correct representation of the location and situation of said bridge, and of the shores and waters of said river at high water, and of the other places noted on it. The dotted line marked on said plan from Drake point, opposite Noble's island, up said river on the western side to above

Freeman's wharf, is a just representation of the shore at common low tides, as surveyed by me; all west of said line to high-water mark is beach or flats, and is bare at common low tides.

I measured base lines in several places and took courses, from which and admeasurements, I ascertained the following distances, viz., the distance across the river from the east end of the bridge to Windy point at the place marked A on the plan, is ninety-two rods; from the same point A to the west end of the bridge at the toll-house, is eighty-eight rods; from the toll-house across the river to the point marked B, on the eastern shore in Kittery, at high water, 43 rods below the easterly end of the bridge, is ninety-six rods. The shortest distance across the river above the bridge, and below Spinney's creek, is at the point marked D on the plan, about 132 rods above the easterly end of the bridge, and is 740 feet; about eighty rods above said place, marked D, the river again becomes narrow, and is in several places, between said point mentioned above, and the northerly side of the farm of Ichabod Bartlett, esq., less than seven hundred feet wide, after which it widens, and continues much wider to the Portsmouth line, and so continues to Dover point, between the towns of Newington, in N. H., and Elliot, in Maine; from the line of Portsmouth to Dover point, I should judge to be about three miles; from the end of the bridge at Rindge's wharf, by the course of the river, and up the same to the dividing line between Portsmouth and Newington, is a little less than two miles. The water in the channel above the bridge to Dover point is deep, and the shore, as far as Portsmouth extends, generally bold, especially the western shore above Freeman's wharf. Elliot was set off from the original town of Kittery about thirty years since. The dividing line between said towns strikes the river at the mouth of Spinney's creek. Elliot extends up said river to South Berwick, a part of the original town of Berwick.

BENJA. AKERMAN.

Affirmed Oct. 29, 1842.

I, George Young, of Dover, depose and say, that the channel of the river at low water, between Portsmouth bridge and Dover point, and thence to Piscataqua bridge, is in no place less than thirty feet in depth. I have anchored there where it was sixty feet in depth. I know of but one place where the water is so shoal as thirty feet, and that is between Dover point and Piscataqua bridge. The general depth from Dover point to Portsmouth bridge is, I should think, from fifty to sixty feet; I have once before this given my deposition in this case. There is no place in the river, except at the narrows, between Portsmouth bridge and Dover point, where the river is not as wide or wider than at the bridge. The money laid out by the Government, under the direction of John T. Gibbs, was laid out at the places marked on Whitehouse's map, "narrows" and "gulf" on Cochecho river. As far back as I can recollect, and from that time to this, I have known trading vessels from other ports to come up to Dover landing to traffick. And

as many as sixty or sixty-five years ago I have known vessels of a hundred tons burthen come up the river and anchor at the junction of Cochecho and Berwick rivers, about three miles below Dover landing, and take in their cargoes for the West Indies. It was customary to put the lumber on the town lots at Dover landing, and thence raft it down the river. Ever since my recollection it was the common custom for men and women living on the banks of the Cochecho in Dover, to go down the river in small boats to Portsmouth to market. At about the same time, both before and after the Portsmouth bridge was built, large manufacturing establishments were put in operation at Dover, Somersworth, Exeter, New Market, and other places, whose transportation has been on the Piscataqua river and its branches.

GEO. YOUNG.

Sworn Aug. 13, 1842.

I, Charles Young, of Dover, depose and say, that the line between Portsmouth and Newington, where it strikes the Piscataqua river, is about one mile above Portsmouth bridge, according to the best of my information and belief. The river from South Berwick to Portsmouth is the dividing line between the States of New Hampshire and Maine. The town of Portsmouth is situated on the westerly side of Piscataqua river, near its outlet to the sea, and below the town of Dover. The village of Dover and the landing lots, so called, in Dover, are situated at the head of tide water on the Cochecho river, a branch of the Piscataqua, and above said town of Portsmouth. Dover point, sometimes called Bloody point, in the town of Dover, is on the Piscataqua river, and is about equally distant from the village in Dover and the village in Portsmouth. The map published by George L. Whitehouse, in the year 1834, of the town of Dover and of the village of Dover, is used and generally accredited by the people of Dover as correct. All navigation between Dover landing and the ocean must necessarily pass through or under Portsmouth bridge.

CHARLES YOUNG.

Sworn Aug. 13, 1842.

I, John T. Gibbs, of Dover, depose and say, that I am forty-one years of age, and my occupation is that of a printer. For about twelve years succeeding 1829 I was inspector of the customs at Dover. Two appropriations of five thousand dollars each were made by the General Government to improve the navigation of the Cochecho river. These appropriations were laid out under my direction. The navigation was much improved by clearing out the channel, taking out rocks and ledges, and widening the channel.

These appropriations were all laid out below Dover landing on the Cochecho river. The above appropriations were made I believe about the years 1835 and 1837.

Sworn July 23, 1842. JOHN T. GIBBS.

I, Moses Paul, of Dover, depose and say, that I *am* for some years past been the agent of the Cochecho manufacturing company, located at Dover. The amount of goods and merchandise belonging to said company, that is transported on the river to and from Dover, and passing under the Portsmouth bridge in packets and gondolas, is in value about seven hundred and fifty thousand dollars per year. This has been about the amount for the last two years, that is, as far as I have examined. It would probably average that for the last two years.

On being cross examined: The goods have sustained no damage for the last two years in the transportation to my knowledge.

On direct examination: About one-half of the cotton used at our establishment is imported from the South, and landed at Portsmouth; thence it is taken to Dover in gondolas. All our coal, about three thousand tons per year, for four years prior to 1840, and in 1841 about two thousand tons, is imported into Portsmouth for us, and thence it is freighted up the river in gondolas. We run more than twenty-seven thousand spindles; at Great Falls they run about forty thousand spindles; at south Berwick about seven thousand spindles; at New Market about fifteen thousand spindles; at Exeter about six thousand. Until the present year the Great Falls company transported their cotton and goods and other merchandise in the same way that we did. I have no doubt that the other manufacturing establishments above enumerated havetransported their goods and merchandise on the Piscataqua river, and under the Portsmouth bridge. The other half of the cotton and other materials for our mills come in the packets from Boston, except some articles which are brought from New York to Portsmouth, and then taken up the river in gondolas. We send no goods down the river in gondolas; they all go to Boston in the packets.

On being again cross examined: Since the opening of the railroad from Boston to Dover, a portion of our goods have been transported over the railroad. I have no doubt that some of the Great Falls goods come over the railroad to Dover, and I have no doubt a portion of our freight will continue to be transported over the road.

Sworn July 26, 1842. M. PAUL.

Charles Young, being duly and publicly sworn and examined on the part of the plaintiff, doth depose and say as follows:

Question by C. W. Woodman, solicitor for Dover. Do you know the Piscataqua and Cochecho rivers, and the navigation of the same between Portsmouth village and below the Portsmouth bridge and the landing, so called, at the village of Dover above said bridge; if so, declare how long you have so known them, your means of knowledge, the character and objects of the boats and vessels that have during that time navigated said rivers aforesaid? Declare what effect the Portsmouth bridge has had, and now has, upon the navigation of said rivers by vessels, and boats, and gondolas, and declare generally all facts within your knowledge relative to the navigation of said rivers before and since the erection of said bridge. Declare the truth of the several matters in this interrogatory inquired after, according to the best of your

knowledge, remembrance, information, and belief, with your reasons fully and at large.

Answer. I am acquainted with the Piscataqua and Cochecho rivers, and the navigation of the same between Portsmouth village and below the Portsmouth bridge and the landing, so called, at the village of Dover above said bridge, and have known them since the year eighteen hundred and fifteen, when I commenced going in a packet between Dover and Portsmouth. I continued in that business most of the time until eighteen hundred and twenty-seven, during the summer months From the spring of eighteen hundred and twenty-eight to December, 1831, I was engaged in the coasting business, that is, sailing between Dover and Boston. Since that time I have not probably passed up and down the river more than a dozen times. During the time I was in the packet business between Dover and Portsmouth, I should think there were as many as eight or ten gondolas owned in Dover, whose business it was to ply on the river. And all of said time in summer months there was one, and a considerable portion of the time there were two, daily packets between Dover and Portsmouth. There was one sloop owned and commanded by Captain Clements, which ran regularly between Dover and Boston. One small pink-stern schooner, commanded by Captain Pierce, also run for one or two years during said time between said places. He afterwards built a larger vessel, and run her one or two years. He and Captain James Wentworth built a schooner of about seventy tons, and run her as a regular coaster between said places one or two seasons. They sold her and built two schooners not quite so large, and run them four years, and until one was lost. The other was run one or two years more as above, and then was transferred to the Despatch Line of Packets on their organization, and has continued in the line until the present time. About the time the two small vessels were built as above, a schooner of about fifty or sixty tons, called the Cordelia, commenced running from Dover to Boston, to Newburyport, to Cape Ann, Thomaston, Portland, and other places, and back to Dover. She was called a transient vessel. She continued to run as above until she was transferred to the Despatch Line of Packets aforesaid. About the same time a schooner of fifty tons or upwards was owned in Dover. She was engaged in the fishing business, called the Laurel, and afterwards engaged in the southern trade. She sailed from and returned to Dover.

Another schooner, called the Marion, of about forty tons burthen, was at the same time owned in Dover, and was employed as a transient vessel between Dover and other ports. She was owned in Dover about two or three years. About 1826 or 1827, a sloop called the Satellite, was bought by people in Dover and Great Falls Company. She was of about sixty tons. She and the two vessels built by Peirce and Wentworth as above, were formed into a line and run as above, and finally she was transferred to the Despatch Line of Packets. Some two or three years before the organization of the Despatch Line of

Packets, a schooner called the William Tell was put on the course between Dover and Boston. She was of about seventy tons, and was owned principally by the Great Falls Manufacturing Company. She is now, and always has been since their organization, the property of said Despatch Line of Packets. Shortly after, possibly a year, another schooner of about thirty tons, called the Young Tell, was bought by Moses P. Perkins of Dover, and was employed one or two seasons as a transient vessel. About the time the Young Tell was sold, another schooner of about forty or fifty tons was bought and put on the course from Dover to Boston, and elsewhere. She ran a part of two seasons, owned partly in S. Berwick and partly in Dover, and named Volusia. About the time the Volusia was bought, or a little before, a sloop called the Flash was put on the course between Dover and Boston. She run one or two seasons, and until she was transferred to the Despatch Line of Packets on their organization. She was owned by the Great Falls Manufacturing Company, and by citizens of Dover, and rated about fifty tons. A sloop called the Sally, of about thirty tons, commenced running about the time the Cordelia above named did, and run until the Satellite was bought, for which she was in part exchanged. Since the organization of the Despatch Line of Packets, they have owned and kept in their employ about seven vessels. Four, from seventy to eighty tons each, are and have been employed in the line between Dover and Boston. The others, from fifty to sixty tons each, are and have been employed as transient vessels. The Portsmouth bridge has always been considered a great obstruction to the navigation of the river. It has been considered dangerous for any but experienced persons to pass the bridge. Before the bridge was built, it never was considered difficult to pass up and down the river either by night or by day. It never was considered difficult at any time of the tide with a fair wind to pass where the bridge now is. Vessels could leave Dover and pass down in the night before the bridge was built without difficulty. Since the bridge was built, gondolas have to wait until a slack tide, or nearly low water, before they can go down through the arch with safety. The difficulty is in the location of the arch, and the strength of the current when the tide is on the ebb. There were two or three other places in or near the strength of the current where attempts were sometimes made, sometimes successfully, and sometimes not, to pass. This was never attempted except in cases of necessity. When gondolas came up, they usually started so as to pass the bridge at about still water, as it was difficult and dangerous to pass it when a strong current set up the river. If the arch had been built in the centre of the current, there would have been less difficulty in passing up and down either on the flow or ebb of the tide. The natural current of the tide, either on the flow or ebb, is not at right angles with the bridge. It makes at half tide at the centre space an angle of about forty-five degrees with the bridge, I should think. This is about the same on the flow as the ebb. I have seen several gondolas that were upset against the bridge, and have seen their lading, being wood, float down the river. If, on going

down, the state of the tide is such that the arch is not attainable, a passage could not at the same time be made round Ham's island, if an arch was made in the bridge on that side of the island. The great difficulty consists in getting into the eddy, and being in the eddy the passage under the bridge through the arch is comparatively easy at a calm time. It is not safe to pass the draw in the bridge with the strength of the tide, unless there is a head wind in going down. Sometimes we got through without much delay, but not unfrequently we were delayed in waiting for the right time of the tide, and by so doing lost a favorable wind, and had to lay by a day or two. It was not considered safe to pass the draw by night, and was scarcely ever, if ever, attempted to my knowledge. The draw was very badly constructed. It is not so difficult in getting up the river as in going down with vessels. The natural current of the river at half ebb, I should consider about four miles per hour at the bridge. During the last war, the frigate Congress and several large merchant vessels were moored in the Piscataqua, or in its branches higher up. The Piscataqua river is navigable at all seasons of the year to Dover point, five miles above Portsmouth bridge, for all classes of vessels. Vessels drawing seventeen feet of water could come up the Cochecho river, four miles above Dover point, and to within two and a half miles of Dover landing. The largest of the packet vessels now employed at Dover, draw, when loaded, seven or eight feet of water. Vessels drawing ten or eleven feet of water could come, at full tide, to within a mile of Dover landing.

On being cross examined he says: I have not had occasion as commander of a vessel to pass through the bridge since the alteration of the draw in the year 1836; nor have I had any concern in the navigation of said river since December, A. D. 1831. The gondolas usually start from Dover from the necessity of the case at or about high water, and being rowed down the Cochecho to the Piscataqua river, and then being permitted to float with the tide, they would reach the bridge at about slack tide, which is about the proper time of passing it. It would take about four and a half hours to row a loaded gondola from Dover landing to Portsmouth bridge. In leaving Portsmouth there is a necessity to leave as the tide begins to flow. Since the erection of the bridge, the gondolas have diminished at least one-half from Dover to Portsmouth. During the same time, the amount of tonnage of vessels employed between Dover and other ports has increased, I should think, about fifty per cent. During the time I navigated the river, I never lost any property or goods in the river, but have sustained small injuries to the vessels by the bridge, to no great amount.

Direct examination resumed.

At the time I navigated the river the main draw in the bridge, where vessels, ships, and steamboats of any considerable size, were compelled to pass, was not so constructed, and was not put in such a place in the river, that they could freely, easily, and safely pass and repass. The

draw in the bridge between Ham's island and Portsmouth main land was not designed for those who pass up and down the river. It could not be so used by vessels of large size. We used to consider that when we had passed the bridge half of the passage was made to Boston, which is about ninety miles the way we went.

CHARLES YOUNG.

Sworn July 14, 1842.

Archelaus Trefethen being duly and publicly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

Question by C. W. Woodman, solicitor for Dover.

Do you know the Piscataqua and Cochecho rivers, and the navigation of the same, between Portsmouth village and below the Portsmouth bridge and the landing, so called, at the village of Dover, above said bridge? If so, declare how long you have so known them, your means of knowledge, the character and objects of the boats and vessels that have during that time navigated said rivers as aforesaid. Declare what effect the Portsmouth bridge has had, and now has, upon the navigation of said rivers by vessels, and boats, and gondolas; and declare generally all facts within your knowledge relative to the navigation of said rivers before and since the erection of said bridge. Declare the truth of the several matters in this interrogatory inquired after, according to the best of your knowledge, remembrance, information, and belief, with your reasons fully and at large.

Answer. I am well acquainted with the Piscataqua and Cochecho rivers, and the navigation of the same, between Portsmouth village below the Portsmouth bridge and the landing, so called, at the village of Dover above said bridge, and have been acquainted with them, and the navigation of the same, for fifteen years now last past. I have been well acquainted with Portsmouth harbor and with the navigation of the Piscataqua from the harbor up above the Portsmouth bridge, for twenty-five years now last past. Fourteen years ago I commenced, as a sailor, on board one of the regular packets between Dover and Boston, and so continued for about four years. For ten years now last past I have commanded one of said packets. The construction of the Portsmouth bridge is such that boats and vessels cannot and do not pass freely and easily through it, except the wind and tide are favorable, and then it can be passed through without much trouble. I do not know that it can be made better. The current through the draw is sometimes at right angles with the bridge, and sometimes it passes through it in a diagonal manner. In order to pass through the bridge in safety, it is necessary to cast anchor, nine times out of ten, whether we are going up or down the river. Even then we very often meet with damage in passing, by striking against the bridge. The vessels which I have been in have in passing it lost two jib-booms, oftentimes the davit and railings have been broken; once one of the planks of the hull was

stove through below the wale, about a foot above water, and other damage at various times has been sustained both to the rigging and the hull. [I should consider that the damage to the Despatch Line of Packets in consequence of the bridge, arising from injuries to the vessels and detention at the bridge, would be at least one thousand dollars yearly.] [The foregoing sentence is objected to by counsel for defendants as being an opinion, and therefore incompetent.] The despatch line of packets own and employ seven schooners on the river between Dover and Boston and other ports. The vessels sometimes lay at the pier of the bridge waiting for a favorable wind, which is considered a privilege. If there was no bridge there we should anchor below the bridge in the stream, which anchorage would in every respect be as favorable as laying at the pier of the bridge. We sometimes, in consequence of being detained at the bridge, have lost the chance of a favorable wind, and have therefore in effect been detained two or three days on the voyage to Boston. In the winter season the Dover packets land at the wharf near Piscataqua bridge above Dover point, and about five miles from Dover landing.

The navigation of the river is much impeded in the winter season in consequence of the obstruction the bridge makes to the free passage of the ice out of the river. The ice collects against the bridge and dams up the passages when the tide is on the ebb, so that there is no passing the bridge until the tide shifts. Some years the navigation is thus made dangerous for a month at a time. Were it not for the bridge the ice would pass freely out into the ocean. [In consequence of the obstruction made by the timbers of the bridge to the current when the tide flows up the river, the tide does not rise so high at Dover landing from six to nine inches as it would if the bridge were not made.] [This sentence is objected to by counsel for defendants.] On full flood tide the water is two feet higher on the lower side of the bridge than it is on the upper side. On the strength of the ebb tide the water is two feet and a half higher on the upper side than on the lower side of the bridge. I came to the above conclusion from frequent observations. The difficulties of passing the bridge are such that commanders of vessels not acquainted necessarily obtain a pilot in order to pass freely and safely through it. I scarcely ever knew a captain who was a stranger to come up the river but once, and this on account of the difficulty of passing the bridge.

The existence of the bridge prevents the more frequent navigation of the river by vessels from other ports. The Dover packets sometimes carry to Boston ship timber and other lumber. The packets can come up loaded at low water to about three miles below the landing, and with light loads to within a mile. In consequence of the strength of the current and bad anchorage, it is more difficult to pass through the Portsmouth bridge than any other bridge with which I am acquainted. Unless we have a favorable breeze, we pass through the bridge on slack tides. I have seen three gondolas go against the bridge and capsize; one loaded with boards, two with wood; Joseph Young, deceased, com-

manded the one loaded with boards. My wife's uncle, John Spinner, of Elliott, Maine, lost his life on the fourth day of July, about five years ago, in passing through the Portsmouth bridge. I did not see it, but it has always been so reported and believed in the family.

On being cross examined witness says: That he has been detained, to speak within bounds, for the space of three days at a time, twenty times during the time of his navigating the river. Strangers take a pilot, partly on account of passing the bridge, and also on account of coming up the river. I do not know of any instance wherein the difficulties of passing the bridge have been the sole cause of preventing any person from ascending the river with vessels. No cause of complaint exists as to the manner of managing the draw of the bridge.

On direct examination: Branch pilots conduct strange vessels up no further than the wharfs at Portsmouth. From thence river pilots take charge of them.

In consequence of the bridge, we are compelled to have extra rigging and extra help. ARCHELAUS TREFETHEN.

Sworn July 15, 1842.

I, Paul Burley, of Dover, aged seventy years, depose and say: That I live on the westerly bank of Cochecho river, about half way between Dover landing and Dover point, and have lived there since the year 1816. I was acquainted with navigation before I came to Dover to live, and since that time until within a few years past, I have been engaged in navigation on the Cochecho and Piscataqua rivers more or less every year. For the first few years I was thus employed most of the time; not so much in latter years. I have been in the coasters, gondolas, and small boats. Previous to the building of the bridge, and ever since, I have had a landing place, where I have kept my boat. At the time of the building of the bridge, I noticed that the tide fell off, or did not rise so high as before. I at first wondered at it, not knowing what to attribute it to; but going to Portsmouth, and perceiving then building the Portsmouth bridge, I attributed it to that circumstance; the bridge was then about two-thirds built. The tide has never since rose so high as before the building of the bridge. For years previous to the building of the bridge, I was in the habit of fastening my boat to a certain apple tree; the boat used to float up to within three feet of the tree at common high tides; it used to float on a certain ledge, and rest upon it at common high tides; now, and ever since the building of the bridge, at common high tides the boat will not float nearer than ten feet from the same tree, and it will never float on the ledge aforesaid, except when there is a freshet. According to my best judgment, and from actual admeasurement by me made, I am satisfied that the water at common high tides does not rise so high now by ten inches as it did before the bridge was built, at my said landing place. I know and can conjecture of no other reason than the obstruction made by Portsmouth bridge.

When I first moved to Dover, it was the practice for men and wo-

men in Dover, and Elliot, on the other side of the river, in Maine, to do the principal part of their marketing at Portsmouth; they went down in boats, and returned both by night and by day; my wife was in the habit of managing a boat to and from Portsmouth by night and by day. Since the building of the bridge, the practice of thus marketing at Portsmouth has decreased, and my wife ceased going down or up by night, in consequence of the danger of passing the bridge. When the bridge was first built, I heard some of the women say that they would not go down now, in consequence of the bridge. This was assigned as a reason why they did not go there to market.

On being cross examined: Since I have lived at Dover, the market at Dover has much increased, and the people now in my neighborhood do most of their marketing at Dover.

PAUL BURLEY.

Sworn Aug. 13, 1842.

I, Daniel Trefethen, of Dover, aged forty-one years, depose and say: That I was born in Kittery, in the State of Maine, and there lived until the year 1826, and then moved to Elliot, and in 1828 I moved to Dover, where I now live, and have ever since lived. In the year 1827 I commenced coasting from Dover to Boston and elsewhere, and have been engaged in that business ever since. I commanded one of the Dover packets in the year 1827, and have commanded one from that time to this; I generally make from twenty to twenty-five trips to Boston and back each year, passing under the Portsmouth bridge at the draw twice on each trip. I consider the bridge a great obstruction to the navigation of the river; it is more difficult to pass than any other bridge with which I am acquainted; no bridge could be built there without a great obstruction to the navigation; this arises from the rapidity of the tide, and direction of the current, and the eddies formed in the current. If the bridge had been built about two miles above its present location, there would have been but little trouble in passing it; there the current is more true, the water is not so deep, and the anchorage is better. There are no points of land above this place to occasion eddies, and the whirling about of the tide, as there are just above the bridge; this place is a little above what is called Paul's building yard, and it is the place where we and the other vessels frequently anchor, waiting for the right time of the tide to pass down through the bridge; as the bridge is now, it is difficult and dangerous to pass; to the small craft on the river it is dangerous to property and life; and to all vessels it is dangerous to property, even when they are under the management of the most skilful; when there is a slack tide, or still water, and a favorable breeze, there is not any more difficulty in passing this bridge than others. It is high water at Dover about one hour and a half after it is high water at Portsmouth. On the ebb tide the water is higher on the upper side of the bridge than it is on the lower side. On the flood tide it is higher on the lower than it is on the upper side. The amount of the inequality depends upon the amount of water

in the current. At ordinary times, when the tide is at its strength, the difference is about one foot. In the spring of the year, when there is a heavy freshet and full tides, the difference is two feet on the ebb. I have frequently observed it when making a warp fast to the bridge. I have put my head down from the boat to the surface of the water, and noticed the inequality in the height by my eye. This inequality does not exist through the whole length of the bridge, but only at the place where the main current runs, which is near where the draw in the bridge is.

I have heard the deposition of Archelaus Trefethen, my brother, read to me this day, by the commissioner, and fully concur in his statements in relation to the difficulties and dangers attending the passing of the bridge, and the delays occasioned at the bridge, and the obstructions occasioned by the ice, and the necessity of having extra rigging and help, and the damage occasioned to the Despatch Line of Packets. Were it not for the bridge, I think that twice as many strange vessels would come up the river to Dover landing as now come up. The vessels that I have commanded have sustained damage in passing through the bridge. At one time we broke the davit and the quarter rail. At another time we parted the cable and lost the anchor; we swept the river and got it again. At two other different times we broke the anchor. We almost always rub the side of the vessel against the bridge, and do more or less damage in passing.

On being cross examined: Most of the damage sustained at the bridge has been occasioned by attempting to pass when there was a strong current. We can go through at still water as easy as at other bridges, with the exception of the lack of a buoy below the bridge. I know of no well grounded complaints against the manner in which the draw is now managed. The location of the draw is in the right place in the bridge. And I do not know that its construction could be altered for the better. I do not know of any individual vessel that has been prevented coming to Dover on account of the bridge. I have heard captains say that they would go up to Dover if it were not for the bridge. The duration of still water at the bridge does not exceed one-half hour at a time.

After we are hauled in alongside of the pier, and get our anchor up, we pass the bridge at slack tide as readily as at other bridges.

DANIEL TREFETHEN.

Sworn July 23, 1842.

I, Andrew Peirce, jr., of Dover, aged fifty years, depose and say: That I have lived in Dover about thirty-five years. In the year eighteen hundred and seven I commenced navigating the Cochecho and Piscataqua rivers, in a small sloop then commanded by my father. She was of about thirty tons, and run from Dover to different ports in Massachusetts. From eighteen hundred and seven to eighteen hundred seventeen, I was employed more or less on the river every year but one. From eighteen hundred seventeen to eighteen hundred thirty-two, I was engaged in navigating the river all the time, and during all that

time I commanded a vessel. Since then I have acted as agent for certain vessels and for the Despatch Line of Packets, the owners of which resided mostly in Dover. Previous to eighteen hundred seven, Capt. Clement had a vessel that run from Dover to Boston and other ports. The amount of freights received by the Despatch Line of Packets for a number of years past, has been on an average about twenty thousand dollars a year. That company does none of the freighting to or from Portsmouth. I have made an examination and am satisfied that the value of the goods transported up and down the river, to and from Dover to Portsmouth and by Portsmouth, amounts to about two millions four hundred thousand dollars annually. This intends to apply to the navigation of the Cochecho only.

At the time I navigated the river the draw in the bridge was such that vessels could not pass freely and easily, and at high water with full course of tides they could not pass at all, because the draw did not open wide enough to admit them.

I concur in substance with the statements made by Archelaus Trefethen, in his deposition taken before the commissioners in relation to the obstructions made to the navigation of the river by the existence of the Portsmouth bridge. I consider the location of the bridge as a bad one, and always thought it ought not to be there, nor in any place below the narrows, which are about one mile above there. The anchorage on either side of the river above the bridge is bad, and there are no safe eddies to lie in. If the bridge had been built a little above Paul's building yard, about two miles above the present bridge, there would not have been any more difficulty in passing it, than there is now in passing the bridges at Boston and other places; and it would be perfectly safe and convenient for all river crafts to pass a well constructed bridge at that place. The reasons are, that the tide runs straight and that there is good anchorage. It is dangerous passing the bridge except at slack tides, and it is difficult getting to the bridge at slack tides, except we have a good wind. We always calculated that when we had passed the bridge in safety, we had accomplished one-half of the dangers and trouble of the voyage to Boston. I have heard captains of vessels, that had come up to Dover once, say that they would never come up again on account of the bridge. Were it not for the bridge I have no doubt that many vessels would come up to Dover that do not now come up.

For a number of years past we have been in the habit of importing goods from Boston to Dover, by the vessels of the Despatch Line of Packets, for the section of country following: beginning at Durham, thence to Northwood, to Pittsfield, Gilmanton, Gilford, Meredith, New Hampton, Plymouth, Campton, Sandwich, Tamworth, Ossipee, Effingham, Newfield, Me.; Acton, Shapleigh, North Berwick, and South Berwick, Me.; including said towns, and all the country by said towns included. And were the boat navigation on Winnipisiogee lake good, it is my opinion that we should import many goods for that section of country, for the distance of twenty or thirty miles around Plymouth, and even to Vermont.

On being cross examined: I believe the construction of the draw has been much improved, although I have not been through it of late. If there is to be but one draw, I think the present draw is in the right place; but I think there ought to be another draw on the other side of the stream, near where the arch now is, to accommodate vessels in going down on the ebb tide. Slack water lasts at the bridge from thirty to forty-five minutes. The difficulty arises in getting to the bridge at the right time of the tide. Formerly there was as much difficulty in passing the draw as in getting to it; but now that difficulty has in a measure been obviated. The freighting business has gradually increased at Dover for six years past.

ANDREW PIERCE, Jr.

Sworn July 23, 1842.

I, James Wentworth, of Dover, aged forty-nine years, depose and say: That I was born in Somersworth, but have resided in Dover about forty-five years last past. Previous to the year eighteen hundred and sixteen, from the time I was sixteen or seventeen years of age, I was in the habit of going up and down the Cochecho river, from Dover to Portsmouth, more or less every year. In the year eighteen hundred and sixteen, I was constantly employed on the river in a gondola. From that time to eighteen hundred [and] twenty-three, I was not on the river much, only occasionally. From eighteen hundred [and] twenty-three, I went in a packet from Dover to Boston seven years in succession, and commanded her. Part of the year 1830 I was in the same business. From 1830 to 1833 I was engaged part of the time, and from eighteen hundred [and] thirty-three to eighteen hundred and thirty-six, all the time, in a packet from Dover to Boston. Previous to the erection of Portsmouth bridge, there was no more difficulty in passing the place where said bridge now is, than in passing any other place on the river. It is now difficult and dangerous to pass that bridge except at slack tides. The difficulty of passing at other times than slack tides is the changing of the currents as the tide rises or falls, and the rapidity of the current. I have frequently sustained damages by breaking the railing, bulwarks, and a boat. We used to be damaged more or less in going up and down. I have heard portions of the deposition of Archelaus Trefethen read, relative to the obstruction made by the bridge to the navigation of the river, and relative to the character and rapidity of the currents at the bridge, and the detention and delays occasioned by the bridge, and I fully concur in his statements. Once, about fourteen years ago, I started with a packet for Boston, and was detained at the bridge in consequence of the ice eight days. Had the bridge not have been there we should not have been thus delayed. I have frequently seen gondolas strike against the bridge and lose part of their cargoes, but I never saw any upset. [It is my opinion that no bridge could be built in that place so as to permit vessels to pass freely and easily through it.] [This is objected to.] We always calculated that it took one extra hand in consequence of the bridge; and we con-

sidered the voyage to Boston half performed when we had gotten through the bridge. I have for about six years past carried on a farm within about three-quarters of a mile of Piscataqua bridge. I think the farmers do not go after sea manure so much as they did before the bridge was built. They are afraid to go through the bridge unless they are well acquainted.

On being cross examined: The difficulty in passing the bridge is occasioned by the course and rapidity of the current. There is no difficulty in passing, if we once get there, at slack tides. If there is to be a bridge in the neighborhood any where below the narrows, I do not know but it is in as good a place as any other. The location and structure of the draw are as well as could be if there is to be but one draw.

It is easier passing the draw since it has been altered, and vessels are not so frequently damaged.

JAMES WENTWORTH.

Sworn July 23, 1842.

I, George Young, of Dover, aged seventy years, depose and say: That I was born, and have always lived, in said Dover, except about three years of the time, when I was absent. I commenced gondolaing on the river from Dover to Portsmouth when I was eighteen years of age. I followed that business a good many years, and had charge of a gondola. I also run a daily packet from Dover to Portsmouth a number of years, eight or ten, and had charge of her. I ceased running a packet the year after the Portsmouth bridge was built. I stopped on account of the difficulty of passing the draw. My mast was so high that it would not pass under the draw, and I was much troubled in getting the draw open; and twice I was prevented passing at all; they would not open the draw; they were then building it. For nine years previous to 1831, I commanded a packet from Dover to Boston. Since that time I have not been much on the river. Previous to the building of the bridge, there was no difficulty in passing up and down the river at the place where the bridge now is; nor any more than at other places of the river. We could pass it at any time of the tide. I consider the navigation to be much obstructed by the bridge. It is dangerous to life and property. I have sustained some damage against the bridge, and have seen others injured. Some years ago, I was on board a steamboat, and in attempting to go through the bridge she broke her small boat against the bridge to pieces, and broke in the side of the wheelhouse. At the time I plyed a gondola on the river, I was in the habit of bringing up sea manure, such as rock weed, sea weed, and marsh mud. Others did the same. It was the practice to bring up the sea manure to Dover landing as long ago as I can remember. It was the frequent practice of the farmers in Dover, Somersworth, and Berwick, then to go down with gondolas after their sea manure. A farmer who had been down the river two or three times would have obtained sufficient skill to manage a gondola with green hands before the bridge

was built. Since the bridge was built, it has not been the practice for the farmers to go after their own sea manure. They have usually bought it of the old gondoliers. Never, since the bridge was built, would I have trusted myself with a loaded gondola to pass the bridge when the current ran fast. There is good anchorage ground about two miles above the bridge, where we usually wait for a suitable time of the tide to pass the bridge; and there is no suitable anchoring ground for any craft from that place until we get around Ham's point, near to the bridge; and it is difficult getting to this anchoring ground in consequence of the tide, and also when the wind is unfavorable. If we attempt to reach that place, and do not succeed, the current would carry us against the bridge, and would be likely to capsize. If a suitable bridge were erected near Paul's building yard, about two miles above the bridge, there would not be much difficulty for any craft to pass it. The business of gondolaing has diminished since the bridge was built, I should think. I used frequently to have to send to the man to hoist the draw, and have been detained there a half hour at a time. Those places laid down on the map as Freeman's point and Freeman's cove, are generally known by river men as Ham's point and Ham's cove. From my earliest recollections to the present time, it has been usual to build vessels at Dover landing. I have known, I think, as many as six to be built there in a year. The largest ship ever known by me to have been built there was that by Capt. Robert Rogers. That measured above six hundred tons. The ships usually built here were from two to three hundred tons. I never knew or heard of any loss of life or property at Rice's ferry from Kittery to Portsmouth.

On being cross examined: I do not know whether the bridge injures the gondola or coasting most. The accidents to gondolas are most numerous. If there is to be but one draw in the bridge, it is in the right place. It is where I advised it to be placed at the time the bridge was erected. There should be another near Ham's island for the ebb tide.

GEO. YOUNG.

Sworn July 23, 1842.

I, William W. Rollins, of Somersworth, in the county of Strafford, aged forty-eight years, depose and say: That I was born and lived in said Somersworth until I was six years old. From that time until twenty years of age, I lived in Barrington, and at that age I removed to Somersworth, and have there lived ever since. My occupation has been that of a farmer. For twenty-eight years past I have lived on and occupied the farm where I now live. It consists of two hundred and fifty to two hundred and sixty acres of land by estimation. About one-third of it is wood land; about forty acres is pasture land not covered with wood. The rest is mowing and tillage. For the last twelve years I have cut on my farm on an average, I should think, one hundred tons per year. The first year I carried on my farm, twenty-eight years ago, I used some rock weed, and went after it my-

self in a gondola. We went down with one tide, loaded, and came back the next tide. That was the custom generally previous to building the Portsmouth bridge in my neighborhood. I never went as skipper. The custom in our neighborhood was to hire a man who was acquainted with the river to steer the gondola. I usually took three or four with me; usually my ordinary help, such as I hired from the country to work on my farm, meaning common farm hands. An old man by the name of John Dore used to go a good deal for us; also a man by the name of Ricker. I never went through the bridge but once with a gondola of sea manure. Since the bridge was built I have obtained my sea manure mostly by purchasing it of the gondola men by the load. Sometimes I have hired a gondola with gondola men to bring it up for me; and twice I hired a gondola and some gondola men, and put some of my men on board also. When I have sent, there have been on board two experienced gondola men. The reason why I have not been with my own men since the bridge was built, is the danger and difficulty of passing the bridge. We considered that it was necessary to understand the time and run of the tide in order to go through with safety. When I first went after sea manure I got rock weed, and we went two or three times each year. Afterwards I went more frequently, and sometimes got sea weed or kelp, and sometimes muscle mud. When I first commenced farming I had not but about half as many acres improved as mowing and tillage as I now have. I have gradually increased my mowing and tillage from that time to this. I never bought any sea manure previous to the building of the bridge. I used to pay a dollar a day for the gondola that I used, which would bring up from five to seven cart loads. I landed the sea manure from one to three miles from my farm. I live in a different part of Somersworth from Bartholomew Wentworth. My neighbors, including perhaps eight or ten farmers, were in the habit of obtaining their sea manure before the bridge was built in the same manner that I did. Since the bridge was built they have obtained but little, except what they have bought from those persons who make a business of getting it.

On cross examination: I should think it is more easy and less dangerous passing under Portsmouth bridge now than when first built, although I have had but little experience, having never passed under it but once in a gondola. I should think that the quantity of sea manure used in my neighborhood is less than the quantity used twenty years ago, and not more than half as much now as six or eight years ago. I do not know that sea manure has increased in price more than stable manure.

On direct examination: For the last three years I have bought no rock weed or sea weed, and but little mud. The reason consists in the fact that it is difficult to get it of those that are in the habit of bringing it up; and I have considered it more profitable to purchase stable manure at the price it is going at than to buy sea manure.

W. W. ROLLINS.

Sworn July 22, 1842.

I, Bartholomew Wentworth, of Somersworth, in the county of Strafford, aged fifty-four years, depose and say: That I was born, and have always lived, in said Somersworth, and my occupation has been that of a farmer. Frequently before the Portsmouth bridge was built I was in the habit of going down with a gondola below the place where said bridge is situated, after sea weed and other sea manure for my own use on my own farm. On those occasions I sometimes went as skipper or captain, and sometimes I employed some other person. I have been down without any person other than green hands with me. I never hesitated to go down without any other person acquainted with the navigation of the river. I never employed any other person but once, except Mr. Ham, to go as skipper for me. He was my neighbor. From the time I was eighteen years old to the time the bridge was built, I went down I should think, with a gondola after sea manure, as many as five times in each year. One year I took up forty cart loads of rock weed on my farm. From the time I was eighteen years old to the time of my father's death, about twenty-eight years since, I and my brother Hall carried on his farm, consisting, at first, of about sixty acres, and, at the time of his death, of about eighty acres of land. After his death I and my said brother divided said farm between us; and now I own about seventy-four acres in all. I consider rock weed to be a very valuable manure, but not so valuable as the muscle mud. We used to consider the weed the most valuable. In order to get the mud we have to go down below the said bridge. But little mud was ever obtained above the bridge, and none now of any consequence. I have never been through the bridge with a gondola with sea manure. The reason is, that I was afraid to do so, considering it dangerous passing it. I did not consider myself sufficiently skilled in the management of a gondola to go through it at such times of the tide as I ordinarily passed that place. Had the bridge not been built there I should have continued to have brought up more or less. We used to go down and back the same day; I never missed but twice. We used to come up over the place where the bridge now is at the strength of the tide. Two or three times I got wind bound, so as to prevent taking the gondola up to within a few miles of home, and then came home on foot. From the time of the building of the bridge I have, I think, every year purchased more or less of some description of sea manure that comes from below the bridge. Last season I paid Mr. Ham sixty dollars for four gondola loads of muscle mud. Each gondola contained fifteen cart loads. When I used to go down after sea manure for myself, I took from one to four hands with me, according to the size of the gondola. My neighbors generally used the sea manure. Some went after it themselves, and some purchased it. I should think that two-thirds of the sea manure, then used by my neighbors, was brought up by themselves. This was before the building of the bridge. I should think that half of the owners of farms in the lower part of Somersworth, managed the gondolas in getting up their sea manure at that time. Some of it was brought up Berwick river to

South Berwick landing; some of it was landed at Garvin's wharf, about half a mile below; some at Style's cove, about half a mile below Garvin's wharf; some around Somersworth point; some was brought up the Cochecho to Fresh creek, and thence up the creek at various places to about a mile; some was brought up to Dover landing, which is about half a mile from the line of Somersworth. When I used to go down after sea manure, I have seen frequently other gondolas there loading, and coming up the Piscataqua. Sometimes I have seen as many as a half dozen at a time, I think. Some came up the Cochecho, and some went up the Piscataqua, towards Exeter, New Market, or Durham. After the building of said bridge, many of my neighbors ceased going after sea manure as formerly, and I think the bridge prevented them. I should not have been afraid to pass through the bridge at still water, when there was no wind. Rock weed is used principally in tillage, and the mud is used on the grass land. I generally mow over about twenty-five acres of land, and cut from thirty-five to fifty-five tons of hay annually.

On being cross examined: For three or four years past I have used more sea manure than I did twenty-five years ago. Rock weed will bring two dollars a cart load now as quick as it would one dollar thirty years since. Barn manure was formerly one dollar and twenty five cents to one dollar and fifty cents per load; and it is now worth from two to three dollars. I cannot make any comparison between the value of mud now and twenty-five or thirty years since, as but little was then used comparatively. I should think that the quantity of sea manure made use of has increased in my neighborhood within twenty years past. I cannot, at all times, obtain sea manure at what I consider a reasonable price; people will not fetch it.

On direct examination: The farms in Somersworth and Dover have been very much improved within twenty years past. I should think that there was twice as much land in mowing and tillage in my neighborhood as there was twenty years ago.

Those that bring up gondolas of sea manure now are men well skilled in the navigation of the river; none besides those attempt it.

BART'L'W WENTWORTH.

Sworn July 22, 1842.

I, Enoch Dunn, of Dover, aged forty-five years, depose and say: That I moved to Dover in the year eighteen hundred [and] eighteen, and have lived there ever since. During that time I have been engaged on the Cochecho river between Dover and Portsmouth mostly, and a portion of the time on the other branches of the Piscataqua, between Portsmouth and the villages at the head of tide water. I have been mostly in gondolas; one season steadily in a packet. During the winter season the gondolas came up as far as Piscataqua bridge, or to Dover point. The first year I was hired by William Perkins by the trip. From that time to this, except when in the packet as above, I have had the charge of one or more gondolas. One year I run three

gondolas; about one-quarter part of the time I run two gondolas. They were all of the large class of gondolas, carrying from thirty-two to thirty-five or six tons. I have brought twenty-five cart loads of rock weed in a gondola at a time. Rock weed is obtained from the rocks around the fishing islands between high and low-water mark, and is obtained without paying anything for it. When it is obtained from individuals' land, we generally have to pay a trifle for it. We generally have to pay for kelp or sea weed. This is a weed that washes in from the sea. We usually have obtained muscle mud at Little harbor, three miles below Portsmouth bridge. This year I have gotten some just below the bridge. There are other places where it has been obtained below Portsmouth bridge. There is a fresh supply of rock weed and sea weed both in spring and fall. Muscle-mud beds are from one to three feet deep, and would be replenished once in about seven years. I brought up more or less of sea manure every year that I run gondolas, except the last year. There ought to be two men, at the least calculation, well acquainted with the business on board of the gondola, in order to go safely through the bridge. Were it not for the bridge, one man, well skilled, would be enough with any common help. In any other part of the river, if the gondola takes a shear, it can be easily righted; but at the bridge, if it takes a shear, it cannot be righted. In coming up loaded, if the wind is favorable, we come through the bridge often on the strength of the tide, if it be in the day time; but if it be night, we never venture through on the strength of the tide, but do when it is still water. When it is still water, or on the ebb tide, we go through the arch. When on flood tide, we go through the draw, or inside of the draw. Were it not for the bridge we could come up by night. Several other persons beside myself have brought up sea manure to Dover landing for sale, more or less every year. More salt mud comes up the Cochecho river, but more sea and rock weed goes up the Berwick river. Salt mud is also carried up to Durham, Exeter, &c. The common average price of rock weed, before the bridge was built, was about one dollar and a quarter per cart load. The average price now is two dollars. The quantity of salt mud that would bring ten dollars then would bring fifteen dollars now. The navigation through the Portsmouth bridge is very difficult, and very dangerous to life and to property. About fifteen years ago I saw three gondolas, loaded with wood, upset against the bridge at one tide, and within about a half an hour. The wood was all thrown out. At this time one man was drowned. His name was Presson, I think.

A gondola of large size will carry from sixteen to eighteen cords of dry hard wood. Wood, when thrown out, is mostly lost; boards are not so likely to be lost. The gondolas are often damaged, and I have known two or three that broke by striking against the bridge. I have struck the bridge with the gondola more or less every year, and have broken oars, and have sustained other damage, but have never got capsized against the bridge. I saw James Ricker capsize a gondola

against the bridge, loaded with beef, pork, trunks, &c. The pork and beef belonged to the Dover M. Co., and the gondola belonged to Capt. Joseph Young, as I understood. This was soon after the bridge was built. I saw Mr. Channel against the bridge with a load of timber, the gondola filled, about two years ago. I saw Benjamin Warren capsize a gondola of boards against the bridge. In addition to these, I have seen other gondolas upset, and other accidents occur. I do not recollect the particulars. I once knew a yawl boat upset against the bridge and sink. The two men, sailors, clung to the bridge, and I took them off in a wherry. It was in the night, but not so dark but that I could see to navigate the river. I understood by them that the accident happened by the mast striking against the bridge. I saw Mr. Spinney upset his canoe against the bridge going down. He was well acquainted with navigating the river. I consider the bridge a great obstruction to the navigation of the river. It often occasions loss of time, and thereby makes my expenses greater for boarding hands, &c. On the ebb tide at the full tide, which occurs twice a month, the water is a foot higher above the bridge than it is below the bridge, I should think. I think the tide runs through the bridge at the middle spaces one-third quicker than it does at a short distance above or below the bridge. At some other parts of the bridge there are eddies and counter currents. When we have been in the habit of going through the bridge on the strength of the tide, it was when we were bringing up sea manure, or were down the river so far that we could easily hug the eastern shore. When we were loaded at the Portsmouth wharves, we would not leave on the strength of the tide, but would generally wait for slack water.

On being cross examined: It would improve the passing of the bridge by widening the open spaces. The difficulty does not arise from the location of the spaces, but in the current. It is easier passing the bridge now than when first built, in consequence of alterations made in it. I do not know whether the prices of stable manure have risen in a ratio corresponding to the prices of sea manure. The gondola business on the river has increased for the past twenty years.

On direct examination: The articles brought up by gondolas from Portsmouth to Dover are coal, cotton, flour, plaster of paris, lime, &c. For five or six years past, five or six gondolas have been regularly employed on Cochecho river, between Dover and Portsmouth. The gondolas, when not thus employed, would be employed in bringing up sea manure.

ENOCH DUNN.

Sworn July 22, 1842.

I, James Dore, of Somersworth, depose and say: That I am sixty-five years of age. I was born, and have always lived, in Somersworth. For forty years past, except when the river was frozen, it has been my main business to carry on the boating business between S. Berwick and Portsmouth, and Dover and Portsmouth. Most of my

business on the river has been in gondolas. I have been in a packet some.

From my experience, I should say that the Portsmouth bridge is a great obstruction to the navigation of the river, and is dangerous to property and life. Boats cannot pass easily and freely through the bridge, except on the slack of the tide. I never have been through any bridge except those on the Piscataqua and its branches, and those at Great island. I have had accidents sometimes happen to myself, and have known them to have happened to others at the bridge. I was once on a raft that struck against the bridge, and a gondola with it was capsized, loaded with oak plank. I have helped persons off from the bridge in distress, and have seen gondolas that were capsized against the bridge, and the wood floating around. I have run against the bridge many times, but did not do much injury, except losing oars. I have broken perhaps a half dozen oars at the bridge. Oars are worth six dollars a pair. I have seen four or five gondolas capsized against the bridge that were loaded with wood. They were commanded, one by Chadbourn, one by Isaac Hobbs, one by John Roberts. This last was broken in two. Chadbourn's had the bows broken. The bridge lessens the number of craft that would ply on the river, and also the number of trips made by those who regularly run. A number of times, in consequence of being hindered at the bridge, I have been delayed from two to four days. Gondolas could come from Portsmouth up to Dover landing, or South Berwick, with a fair breeze, with half tide.

Major Thomas Lee, of South Berwick, now deceased, as agent of the General Government, laid out a large amount of money in deepening the channel of the Berwick branch of Piscataqua river, some eight or ten years ago. After his death, Timothy Ferguson acted as agent for the same purpose. They were at work there three seasons.

S. Berwick farmers have used sea manure from my earliest recollection. It comes mostly from below the bridge. They used to go and get it themselves; hire a gondola, and rig out a crew. They now buy it. The rich farmers began to drop off before the bridge was built. Pretty soon after the bridge was built, as I was coming up through the bridge, the oar of my partner struck against the bridge and was broken into three pieces, and he came very near being thrown overboard by it. I caught him by the heel, or he would have gone over. Immediately after a gondola came along, in which was David Lord, of South Berwick. His oar struck the bridge, and, hitting him in the stomach, knocked him overboard. I saw him in the water struggling, but he was drowned.

On being cross examined: Accidents do not often happen at the bridge at slack water. The difficulty in passing is in getting out of the current into the proper places to pass. Full as much sea manure is used in my neighborhood now as twenty years ago.

JAMES DORE.

Sworn July 25, 1842.

I, Stephen Hanson, of Dover, depose and say: That about a year or two after the building of the Portsmouth bridge, I carried on the butchering business as an agent, and in the course of the butchering business there was occasion to ship to Portsmouth a lot of beef and pork, and also a lot of cut nails; all of which were directed to A. & J. Wendell, of said Portsmouth, I think. They were put on board of a gondola commanded by Joseph Young, now deceased, at Dover landing. The gondola went against the bridge, was capsized, and the cargo lost. The loss of the beef, pork, and nails, amounted to about six hundred dollars.

On being cross examined: This is the same disaster as testified to this day by Joseph Dame.

I am the acting agent of the town of Dover in collecting the testimony in this case.

STEPHEN HANSON.

Affirmed July 15, 1842.

I, George Pendexter, of Dover, aged sixty-two years, depose and say: That about fifteen years ago my brother, Thomas Pendexter, was drowned at Portsmouth bridge, by the capsizing of a gondola, as it has always been reported and believed in the family. I attended his funeral. Some two or three years since the above, I had a gondola load of boards and plank going down the river; I was on board; Stephen Twombly was skipper; we struck the bridge, and damaged the lumber at least twenty dollars. Twombly was an experienced navigator. The tide was running rapidly.

A year or two after the above, I was going down the river with a gondola load of lumber, with which to build a barn at Portsmouth; the gondola struck the bridge and broke two of the side planks, and broke two oars; she was commanded by Captain Perkins; I had to pay fourteen dollars for the damage done the gondola.

Once in coming up the river in a packet commanded by Clark Paul, in passing under the arch, the top of the mainmast struck the top of the arch, and submerged the stern of the boat; that portion of the timber of the arch that was struck by the mast gave way, or we should have probably filled, as the water was fast coming in at the rudder hole.

I cannot tell at what time of the tide the above accidents happened.

GEO. PENDEXTER.

Sworn July 25, 1842.

I, Ivory Chadbourne, of South Berwick, Maine, aged twenty-nine years, depose and say: That I was born, and have always lived in South Berwick. For the three years previous to this, it has been my regular business to navigate the river from South Berwick to Portsmouth in a gondola; for the three previous years I went occasionally, perhaps ten or a dozen times each year. The navigation of the river through Portsmouth bridge is difficult and dangerous.

The last day of last November I went against the bridge with a gon-

dola loaded with twelve cords of hard wood and four cords of hemlock; the gondola capsized, and the wood was lost; the gondola was broken in two, and damaged at least fifty dollars. I had engaged the hard wood for five dollars sixty-two and a half cents per cord, and the hemlock for three dollars and fifty cents per cord. I have many times been delayed, waiting for the tide suitable to pass the bridge.

I saw a Durham gondola lay against the bridge last year; she was not capsized. I also saw a gondola of salt against the bridge. It was an uncommon full tide, and about one hour and a half before low water, when I lost my gondola; there were seven gondolas in company, and all got through in safety but mine.

IVORY CHADBOURNE.

Sworn July 25, 1842.

I, George Chadbourne, of South Berwick, Maine, aged thirty-four years, depose and say: That for seven years past I have been constantly engaged in navigating the river from South Berwick to Portsmouth, four years in a packet, and three years in a gondola, when the river was open. I consider that the Portsmouth bridge makes the navigation of the river difficult and dangerous to property and life. Two years ago last April I capsized a gondola against the bridge, and lost about seven or eight cords of wood; we saved about five cords, but it cost us about as much as it was worth. At the same time I lost the sail, worth six dollars; wood was then worth at Portsmouth about five dollars and a half a cord. I have been delayed there, waiting for a proper time of the tide, once or twice in a season. I have seen other gondolas from South Berwick and Durham lying against the bridge, and their contents, wood and lumber, floating down the current. There are about ten gondolas in Berwick river, four of which are employed; two years ago they were all employed; the business is now dull. At the time I met with the above accident, it was about an hour and a half before low water. I was in the employ of Moses Varney four years in a packet.

his
GEORGE × CHADBOURNE.
mark.

Sworn July 25, 1842.

I, Paul Chapman, of New Market, aged forty-two years, depose and say: That I was born and always have lived in New Market. That from 1818 to 1830, I was in business as a trader at New Market. In the year eighteen hundred [and] twenty-four I sent down a number of hundred of cords of wood to Portsmouth. I lost two gondola loads of hard wood and one gondola load of pine wood at Portsmouth bridge. Hard wood was then worth three dollars and fifty cents per cord, and pine wood was worth two dollars per cord at Portsmouth. There was about twenty five cords of hard wood and about fifteen cords of pine.

Previous to the building of Portsmouth bridge the farmers in New

Market were in the habit of using considerable rock weed. I do not remember of seeing any brought up since. This wood was taken down by contract by William L. Caverly; and Nathan Preston, who was drowned was on board of one of these gondolas.

PAUL CHAPMAN.

Sworn July 26, 1842.

I, Abram F. J. Channel, of Durham, aged twenty-eight years, depose and say: That I was born in Essex, Me., and was moved to Durham when a child, and have lived there ever since. When I was in my twenty-first year I commenced boating on those branches of the Piscataqua which lead to Durham, New Market, and Exeter, and thence to Portsmouth. From that time to this I have been engaged in that business more or less most of the time. At present I and my brother have three gondolas in the business. I should think we have had on an average as many as two gondolas engaged in the business. The Portsmouth bridge has a bad effect upon the navigation of the river. It is a great obstruction to the navigation of the river. It is dangerous passing the bridge at all times, except at slack water, both to property and life; I have lost some time and some property at the bridge; about three years ago I was taking down some ship timber to Charles Raynes, and lost three sticks of timber that cost me about thirty dollars; at the same time I broke an anchor and an oar. The whole loss I should estimate at fifty dollars. Once I attempted to go up the river with a gondola loaded with cotton, but was detained at the bridge so as to be unable to reach home at that tide, and in consequence of the winds afterwards, I was detained nearly a week. Had I not met with any accident at the bridge, I should probably have got up with that tide. I broke an oar at the bridge; I have at other times struck against the bridge with gondolas and rafts, but received no essential injury, except the loss of time and labor. [I consider that the bridge has injured me in the loss of time and otherwise five hundred dollars.] [Objected to.]

On being cross examined: At the time of the accident to the timber, above described, I should think it was about two-thirds ebb of the tide.

ABRAM F. J. CHANNEL.

Sworn July 26, 1842.

I, Abigail Nutter, of Elliot, Maine, aged forty years, depose and say: That on the twenty-third day of January, A. D. 1838, a Mrs. Hanscom having made a visit at our house, was desirous of being carried to Portsmouth. My two sons, John, aged then about fifteen, and William Burleigh, aged then about eleven years of age, took our boat and Mrs. Hanscom, to carry her down to Portsmouth. It was a pleasant day. The boat was broke against the bridge, and all three thrown into the river. The boat was returned broken. Mrs. Hanscom and John were picked up and saved; John was injured in his stomach; he held on to the bridge; William Burleigh was lost, and his body was never found, to my knowledge. I did not see the transaction, but was then informed

of the truth of it, as above related, and have no doubt of the fact. It was about one of the clock in the afternoon when they left, and I was informed of the disaster at about three in the same afternoon. My said two sons were in the habit of going down to Portsmouth in a boat together, without any other person in the boat. I used to send them down on errands frequently to Portsmouth. At the time of that disaster I had been a widow about four years, and these were my only sons. I never heard or knew of my sons meeting with any disaster at the bridge before. It was about half ebb tide when they went away; it was a very full tide, and the tide run rapidly.

ABIGAIL NUTTER.

Sworn August 4, 1842.

I, Benjamin A. Ford, of Dover, aged forty-five years, depose and say: That I was born on Dover Point, and have always lived there; I have been engaged, more or less, in boating business from Dover landing, Dover point, and Durham, and other places on the river to Portsmouth, in gondolas, for thirty-five years past; I navigated the river where Portsmouth bridge now is, before it was built. I consider that the navigation of the river is made difficult and dangerous by the bridge; boats and gondolas cannot pass freely and easily except at slack tide; I have frequently met with accidents at the bridge, and have seen accidents happen to others, and have seen, frequently, craft lying against the bridge. I have been damaged by the bridge to the amount of between two and three hundred dollars. I was taking down a large raft of oak timber about ten years ago, and was detained with the gondola and two men against the bridge about ten days; at another time I was coming up through the bridge with a gondola, and struck against the bridge and broke off three or four knees, and it cost about twenty dollars to repair it. At one time I struck a gondola load of boards, and broke about half a thousand; and at various times I have been detained in consequence of the bridge, and have suffered much by cold, by being confined by the ice at and around the bridge.

In the month of April, 1836, my father lost his life in the river between Dover point and Portsmouth. He was on his way to market; his boat and some of his apples were found about a mile above the bridge; there was then a large quantity of ice in the river. The bridge frequently dams up the ice on the ebb tide, and at flood tide the ice is carried up the river from six to eight miles, thereby preventing the river being cleared from ice. Sometimes the ice dams at the narrows, but not so frequently as at the bridge. My father's boat was found above the narrows; my father was well acquainted with the river; he had frequently been up and down in boats and gondolas, at all times of the year.

About four years since I employed Captain Clark, Captain Stewart, and Captain Dennett, commanders of schooners of the regular line of packets from Portsmouth to Boston, to carry each a cargo of bricks from Dover point to Boston. They refused to enter into any engage-

ment unless I would engage to pilot them through the bridge down the river, which I did. Soon after the bridge was built I was on board a gondola of Joseph Chesley, 3d, of Durham. It was in December. She was loaded with hay and wood. She struck the bridge and capsized, and stove a hole through her bottom. The hay and wood was lost, except about twelve bundles of hay which cost us as much as they were worth to get them. Some of them were picked up on the sea shore. I drifted down on one of the bundles about one and a half mile, when I was taken off.

BENJAMIN A. FORD.

Sworn July 25, 1842.

I, Thomas Card, of Dover, aged sixty-six years, depose and say: That I was born at New Castle, and moved to Dover in the year seventeen hundred and ninety-seven. I have ever since lived on Dover point. For the last forty-five years I should think that I had been employed in navigating the river from Dover to Portsmouth, and other places, as much as half of the time. I have been in schooners to Boston, and in gondolas and other craft from Dover to Portsmouth. I consider the navigation of the river to have been made difficult and dangerous by the erection of the Portsmouth bridge. Previously there was no difficulty in navigating the river where the bridge now is. I once saw a gondola loaded with wood from South Berwick capsize against the bridge. At another time I saw wood floating on the river below the bridge; they were picking it up.

Once, when I commanded the schooner Laurel, I broke my anchor at the bridge, and it cost me eight dollars and a half to repair it. Once in going down through the bridge in a pink stern schooner, she struck the bridge, and the commander was thrown overboard, but he caught by the down haul that was in the water. Twice I have seen strange vessels cast against the upper side of the bridge. Strange captains used frequently to come up the river before the bridge was built. Since, then, there are not so many; I should not think there were half so many. None now come up through the bridge without a pilot. A pilot is more needed there than at any other part of the river.

THOMAS CARD.

Sworn July 25, 1842.

I, Joseph Dame, of Dover, aged forty-four years, depose and say: That I was born in Newington, and have resided in Dover for about thirty-two years last past. For at least twenty years last past, previous to this year, I have been engaged most of the time on the river from Dover to Portsmouth, and from Dover to Boston. For about six years I was in a packet and gondolas from Dover to Portsmouth, and since that time I have been in a schooner coasting from Dover to Boston, &c. I have seen a number of gondolas, perhaps half a dozen, loaded with wood and lumber, go against the Portsmouth bridge and capsize. I saw one loaded with wood go against the bridge last fall and capsize.

The wood and lumber on board the gondolas would be totally lost to the owners. I was once waiting at the bridge for the tide, and a small boat from Elliot containing a woman and a boy about ten years old, and a girl about twelve, came down the river and capsized against the bridge. The boy clung to the bridge. The woman and girl drifted down. I went with one boat, and Daniel Trefethen with another, and each picked up one, and thereby saved their lives. I know of no way by which they could have been saved had we not have been there. About eighteen or twenty years ago, I saw a gondola commanded by Joseph Young, now deceased, go against the bridge and capsize. He was loaded with lumber and barrels. The barrels sunk, and I concluded they were filled with something. They were said to have been filled with beef. About two years ago last spring, I and Clark Paul, Mr. Tripp, and Charles Wentworth, in a whale boat, were going outside fishing. In going through the bridge we struck the bridge and capsized, and the boat filled. We were all well acquainted with the river and with the management of boats. Mr. Paul had for several years commanded a packet from Dover to Portsmouth, and now commands one of the vessels of the Despatch Line of Packets. The current does not set through the draw or the arch at right angles with the bridge, but in a diagonal direction. I should think a buoy below the bridge would be advantageous. I have been through the bridges in the neighborhood of Boston, and never have found any to be near so difficult as the Portsmouth bridge is to pass through. It takes from one to three hours to pass the bridge. If we get through in an hour we think ourselves very well off. It requires great care and activity on the part of the hands to get through. It is not safe to go at any other time with a vessel than at a slack tide, unless there is a favorable wind. I have been in vessels when the railing was broken, and when the davit was broken, and when the rigging has been injured at the bridge. Once, when I was coming up, we crushed the small boat between the vessel and the bridge. Very frequently in consequence of being delayed at the bridge in passing, we have lost the chance of coming up to Dover by that tide, and sometimes in consequence of being delayed at the bridge, we have lost the chance of a favorable wind to take us out on our voyage. More rigging is needed in consequence of the bridge.

JOSEPH DAME.

Sworn July 15, 1842.

I, Eli Cole, of Elliot, in the State of Maine, aged sixty-one years, depose and say: That I have always lived on the shore of Piscataqua river, in Elliot, and within about a mile and a half of the place where the Portsmouth bridge now is. I have been engaged in fishing in schooners twenty-seven summers. Seven summers of the time the schooner was owned and wintered about a mile and a quarter above where the bridge is. This was before the bridge was built. For nine summers I went in a schooner owned partly above and partly below the bridge. The captain who lived above the bridge owned one-eighth

part of the schooner, and the difficulty of passing the bridge was the reason why he did not take [the] schooner up the river where he lived. He used to moor her at Haven's island. It would have been convenient for him and his hands to have taken the vessel above the bridge, but he would not on account of the bridge. I think the bridge is a great injury to the fishing business in Elliot. [Objected to as a matter of opinion.]

I have been under the bridge in small craft very often, either going to fishing, to market, or to the navy yard to work. The bridge is very dangerous to life and property. My brother John and his daughter were drowned in the night in the river; they were on their way home from Portsmouth in the night in a small boat; they lived above the bridge. I did not, nor did any one, see them drown or capsize; they were both picked up afterwards below Portsmouth. I am not personally acquainted with these facts about my brother's death, but they are such as are generally believed in the family; he was well acquainted with the navigation of the river; this was about sixteen years ago. I have seen several gondolas capsized against the bridge. I picked up Mark Spinney last summer out of the river; his wherry was capsized against the bridge. I think he would not have long survived if he had not been picked up.

On being cross examined. My brother sometimes would drink to excess; the night was said to have been very foggy; he was about forty-five; he was a fisherman and laborer; his daughter was about sixteen years old. I have known him to go up before and since the bridge was built, when he was so intoxicated that he could not well walk; about forty years ago I knew him once to be upset in a whale boat; that is the only accident I ever knew to happen to him on the river before the bridge, and on that occasion he came very near losing his life; he was on the river almost every day of his life after he was old enough.

ELI COLE.

Sworn August 3, 1842.

I, Charles Spinney, of Elliot, which is a town taken off from the town of Kittery, in the State of Maine, aged sixty-eight years, depose and say: That Elliot lies north of Kittery; the division took place about thirty years ago. I was born and brought up on the banks of the Piscataqua, in the present town of Kittery, and have lived for about twenty-five years in the present town of Elliot. I commenced the business of fishing about fifty years ago; from that time I followed that business and seafaring business for twenty-five years. I commanded a fishing schooner six years; previous to the building of the bridge the people in Elliot owned a number of fishing schooners; they used to come up to Elliot with their loads, and their fish were cured there, and the vessels were moored there; at the time of the building of the bridge I should think that as many as five or six were owned there and thus employed; since the building of the bridge that business has been

stopped, and in consequence of the bridge. I should have attended to the fishing business myself for many years past more or less, had it not been for the bridge. I had the offer of a small fishing craft to go out in, but I declined it wholly on account of the bridge preventing my going up home with her; about five years ago I refused the offer of another fishing craft of about ten tons for the same reason.

The damage sustained by me in consequence of the bridge has been at least five hundred dollars; it is a damage to every man and woman in Elliot. I should have sent down articles to market by my son, but was afraid to trust him through the bridge; women now from Elliot are obliged to go to market themselves and leave their children at home, when before the bridge was built their children used to go; then boys and girls of ten or twelve years of age used to go down with a boat in safety; a great many women go to Portsmouth to market from Elliot; many of them, for fear of the bridge, go down around Ham's island, at the loss of time and labor; others are much delayed and lose tide, &c.; before the bridge was built they stayed as long as the pleased, and then went home without regard to its being dark; but now they are particular to go before night; unless they return before dark there is a great anxiety manifested by the rest of the family.

Some ten years ago, Mrs. Foster, the wife of Parker Foster, was going down the river in a boat with my sister, Hannah Furnald and Lydia Remick; they capsized against the bridge; Mrs. Foster was drowned; Miss Remick and Mrs. Furnald were with great difficulty brought to; the two last died about five years ago. I was here in Portsmouth when they were picked up, and helped put Mrs. Foster in a coffin. I got my information of the particulars of the capsizing of the boat from Mrs. Furnald at the time, when she could but just speak; I have had frequent intercourse with the captains of vessels from other ports, and they very generally complain of the bridge; from what they said and from what I know of the bridge, I think that three times as many strange vessels from other ports would go up the river as now go; were it not for the bridge any vessel could go up as far as Dover point; there never would be any ice to hinder them; until five years before the bridge was built, I lived in sight and within about one hundred and twenty rods of the ferry. I and my family used to go over the ferry to Portsmouth; the ferry could be kept in operation at all times during the winter and summer. I never knew persons to be detained more than half or three-quarters of an hour, and that was a rare circumstance, and on account of the wind. Major Rice kept two horse boats and two yawl boats on the ferry.

On being cross examined: It was about the strength of the ebb of the tide when Mrs. Foster attempted to pass the bridge when she was drowned. She was in a canoe, and was about fifty-seven or eight years of age; Mrs. Furnald was about as old; Miss Remick was about forty-five. These were all that were in the boat. She was capable of holding eight persons. I do not know any thing about their loading; they were well acquainted with the navigation of the river. Mrs. Foster

and one of the survivors were temperate; with respect to the other, I do not know as to her habits. I have understood that she sometimes drank to excess. I mean Lydia Remick. I never knew Lydia to have any thing to do with the management of the craft. She always went as a passenger.

CHARLES SPINNEY.

Sworn August 3, 1842.

I, George Spinney, of Elliot, in the State of Maine, aged seventy-six years, depose and say: That I was born, and have always lived, at the place where I now reside, about half a mile above Portsmouth bridge, on the bank of the Piscataqua. My principal occupation, until two years past, has been that of fishing. In going to the fishing ground I had to pass the place where said bridge is now standing; for seven years I went in a fishing schooner; the rest of the time I went in a whale boat, or other small craft. When I went in such a boat, or other small craft, I was absent from one to three days. Previous to the building of the bridge I was in the habit of carrying up, in a gondola, goods and merchandise from Portsmouth to South Berwick and Dover, and have brought wood from Durham, and lumber from South Berwick and Dover down to Portsmouth in gondolas. Since the bridge was built I have not done any business with a gondola on the river. Since the building of the bridge I should not have been willing to have done any gondola business on the river in consequence of the danger of passing the bridge. It is, in my opinion, dangerous to life and property, and a great obstruction to the navigation of the river. [Matters of opinion objected to.]

Some time during the revolution, I well recollect that two full rigged brigs and one hermaphrodite brig lay for some months above where the bridge now is; one of them lay about one and a half mile above it. One was loaded, in part at least, with rum.

As long ago as I can remember, Colonel Samuel Ham, of Portsmouth, owned and occupied a wharf and store on Portsmouth side of the river, nearly opposite where I live, and about half a mile above Portsmouth bridge. For many years subsequent to the revolution he owned a brig, and used to load her at his wharf and send her abroad, and when she returned she would unload partly at Portsmouth village and partly at his wharf. That wharf was as good as any at Portsmouth at that time, sufficient for any merchant vessel to lay at. It has since been cut up. Above the bridge and below the narrows, on both sides of the river, there is good wharfage ground as any in Portsmouth.

When the Portsmouth bridge was first built there was but one space besides the arch and the draw, and that space was about thirty feet wide. I used frequently to pass through that space with my boat; and whether on the flood or ebb tide it was necessary to use great care, and also the oars, on account of the diagonal course of the current. A gondola could not go through that space, because, with her oars, she occupies more room than that space affords. A gondola would require at least fifty feet in width where there was a straight current.

At common full tides, when there is a calm time, I should think the velocity of the current, above and below the bridge, was at least five miles an hour, and under the bridge the velocity is much greater; I should think twice as great. The tide strikes two sides of every post, and the posts are connected together by horizontal girders of timber down as low as the tide ebbs. The river is wider above the narrows than at the Portsmouth bridge, and up as far as Dover Point the river is nearly as broad as it is at the bridge. Portsmouth bridge is an injury to the people residing above it on either side of the river.

From my earliest recollection to the time of the building of the bridge, there existed a ferry leading from Kittery, Maine, to Portsmouth. It was about a hundred rods below the bridge. I never knew nor heard of any loss of life or property at that ferry.

Ten years ago last July, my brother, John Spinney, went against the bridge with his canoe. The canoe was stove to pieces against the bridge, and my brother was taken out of the river dead. I was in plain sight of the transaction, heard the screeching, &c. A woman in the boat held on to a portion of the boat, and also to my brother, and he was dead when taken out. I therefore supposed he was injured in his body by striking against the bridge. It was not more than ten minutes from the time I heard the screeches until he was brought ashore.

It is about three miles from Portsmouth bridge to the light-house. All the wharves on the river below the northerly line of Portsmouth, suitable for ships to lay at, are below the bridge, and on the Portsmouth side of the river, except at the navy yard. I have frequently seen gondolas loaded with wood and lumber upset against the bridge, and rafts of timber broken up against the bridge.

During the time I went fishing in a schooner, as above, she was owned, and, when at home, kept above the place where the bridge now is; this was before it was built. From the time of my earliest recollection down to the building of the bridge, it was common for my neighbors in Elliot to own fishing schooners, and when they came home they were taken up above where the bridge now is, and there kept until they went out again. They usually unloaded and cured their fish up there; all did so except Captain William Dennet. After the bridge was built but little fish was cured up there, nor did the fishing vessels go up there. It was a great convenience to have their vessels lay at their own door. The pay for curing the fish is the same above the bridge as below it. There is now no fishing vessel owned above the bridge; I have known eleven fishing vessels owned and used in one season above where the bridge is now; I cannot name the year when. For a number of years previous to the building of the bridge the fishing business from above that place diminished, I should think, one-half. The southerly end of Portsmouth bridge rests on what was called Rindge's wharf. It was used as a wood and lumber wharf, and always, as far back as my knowledge extends, was known as Rindge's wharf. It extended about one hundred and fifty feet above where the bridge now is.

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On being cross examined: The spaces under the bridge have been widened and improved since the bridge was built.

My brother was about seventy-three years old when he died as above. He was then well and strong and hearty as any body of his age; it was on the fourth of July, about one o'clock in the afternoon, on his way home from Portsmouth; he was a fisherman by occupation; he was in the habit of drinking freely on some occasions.

I never met with any accident from the bridge, but have lost time and tide in consequence of being afraid to go through the bridge in the night.

his
GEORGE ⋈ SPINNEY.
mark.

Witness—
F. COGSWELL.

Sworn August 3, 1842.

I, Zebulon Willey, of Kittery, Maine, aged sixty-eight years, depose and say: That I was born in Newington, and have always lived on or near the banks of the Piscataqua river, above Portsmouth bridge, until within about sixteen years, since which time I have lived on Badger's island, so called, in the river Piscataqua. Since the last war with Great Britain my principal business has been ballasting—that is, getting stones for ballast for vessels. These stones I obtained mostly at the mouth of the harbor, outside of the light-house, about three miles below Portsmouth bridge; I used to take them up to the place where I lived, which was about two miles above the bridge, previously to my moving on to the island, and there keep them on hand until there was a demand for them. I took them up the river in a gondola over the place where the bridge now is. The bridge was built about four years previous to my moving to the island. Before the bridge was built I had no difficulty in getting up with my gondola over the place where the bridge now stands, either by night or by day, or at any time of flood tide. After the bridge was built I never ventured with a gondola to pass it in the night, except at the arch near Noble's island. I have always considered the bridge to be dangerous to life and property, and a great obstruction to the navigation of the river. There are about fifteen wharves in Portsmouth below the bridge, at which large vessels can lay afloat loaded at low water. All the ground suitable for wharves in Portsmouth, below the bridge, is now occupied for that purpose. I think there is as good wharfage ground above the bridge in Portsmouth, and as much of it, as below the bridge. The river, just above the bridge at Freeman's cove, is about one-third less in width at low water than at high water.

ZEBLON WILLEY.

Sworn August 4, 1842.

I, Stephen Twombly, aged fifty-three years, depose and say: That I commenced navigating the river between Durham and Portsmouth, and

between Dover and Portsmouth, some four or five years before Portsmouth bridge was built. Part of the time I went with gondolas, and part of the time with packets. From that time to the present year I have been constantly engaged as above, both summer and winter. In the winter we come up only to Dover point or to Piscataqua bridge. The Portsmouth bridge is a great obstruction to the navigation of the river, except at still water. When there is any motion in the tide there is more or less danger to life and property. I consider that the arch is not in a proper location; it should be where the second wide space is, that is, in the strength of the tide. The spaces in the middle of the bridge are not wide enough nor high enough. A gondola load of hay could not go under them at one-third ebb tide. At full tides a gondola load of wood could not go under at high tides. I have seen the water in the river rise to within three feet of the stringers of the bridge. At the time we usually pass the bridge, it is very difficult to avoid hitting the posts of the bridge either on one side or on the other. This is occasioned by the diagonal course of the tide and current. I have met with frequent accidents there. [I should say that the bridge has been a damage to me of at least five hundred dollars.] [This is objected to.]

I commenced the gondola and packeting business on the Cochecho river, from Dover to Portsmonth, in eighteen hundred and twenty-nine. The amount of freight received by me annually, from that time to this, has been from one thousand to four thousand dollars. It would average at least two thousand dollars per year. For ten years past I have had in constant employment, on an average, four gondolas and two packet boats. I was on the bridge when Mr. Lord, of South Berwick, was knocked over and drowned. I saw a Mr. Hammonds, of Elliot, brought ashore, having been very badly injured in passing the bridge. He was reported to have died in consequence of that injury soon after. He was in the habit of frequently passing up and down the river, and I used to see him, but never afterwards. He was, I should think, about sixty years old. I expect he was a little careless. The accident occurred by rowing under a girder. I once saw a small boat upset against the bridge, with three women in it; one, Mrs. Foster, was drowned. I once saw two persons hanging on the bridge, and saw a boat go to take them off. I have had three gondolas capsize against the bridge. I have had many hit there. The arch is not high enough for the packet to go under at high water. As often as once or twice in each year I have been damaged more or less in consequence of the arch being built too low. I should think that I had seen as many as seven or eight gondolas lying against the bridge, bottom upwards, since I have been acquainted with the river.

About three years since I was going down with the sloop gondola Washington. We were not loaded. There was a great freshet. In going down near the bridge we attempted to haul out of the current over to the arch. I steered. Four men were at the oars. I expected we should be able to reach the arch, but we could not, and we went

against the bridge. The tide then run as much as seven knots an hour, I should think. It was in the strength of the tide, and no wind.

On being cross examined: The location and structure of the draw are good. It is not usual for the gondolas to reach the bridge from the heads of the river at high water, but they often do. It is not common to leave Portsmouth at high water for the heads of the river, yet we sometimes do, and should do it oftener were it not for the bridge, as the tide runs up an hour and a half after high water.

Such an occurrence as took place with the Washington, above related, could not take place except when there was a great freshet and no favorable breeze. It sometimes happens that gondolas are managed by unskilful persons.

STEPHEN TWOMBLY.

Sworn July 26, 1842.

I, William L. Caverly, of New Market, aged forty-nine years, depose and say: That I was born in Portsmouth; that I moved from Newington to New Market in the year eighteen hundred and fifteen. Since that time it has been my main business, when the river is open, to navigate the river from New Market to Portsmouth, through the Portsmouth bridge. I have been mostly in gondolas; some of the time in packets. In gondolas we carry down mostly wood and timber. We bring up cotton, coal, lime, &c. I never have brought up but very little of sea manure. From the experience I have had I should say that the Portsmouth bridge makes the navigation of the river difficult and dangerous to life and property. It occasions great delay in passing. In going down on a dark night we waste away the time, fearing to go down on the strength of the tide, and thereby we sometimes get belated and have to wait for another tide. We often get ready to start from Portsmouth at a time of the tide that would make it dangerous to pass it, and therefore have to wait, and in consequence of thus waiting, on account of the bridge, we sometimes lose a favorable breeze, and are thus detained. I have been aboard two gondolas, when we struck against the bridge and capsized and lost all the cargo, consisting of wood. I was also near by when another gondola struck the bridge and was capsized, and the cargo lost, consisting of wood, and one of the hands, named Nathan Preston, was drowned. I also know that a gondola loaded with timber, belonging to Abraham J. Channel, struck the bridge and was capsized.

At another time I was aboard a gondola loaded with wood, which struck the bridge, and with great exertion we prevented its being capsized, by throwing overboard some of the wood. The value of the three gondolas of wood above named would probably be from one hundred and fifty to one hundred and seventy-five dollars.

I should judge that, on account of the bridge, I have been injured by accidents, and in waiting for the tides, in time and in damage to property, at least three hundred dollars. [Objected to.]

I think that any bridge below Dover point would be a great obstruc-

tion to the navigation of the river, in consequence of the force and rapidity of the tides. [Objected to.]

On being cross examined: There is no particular danger in passing under the bridge at still water, for if the gondola should touch it would not then do any injury.

WM. L. CAVERLY.

Sworn July 26, 1842.

I, Moses Varney, of Somersworth, aged forty-two, depose and say: That I was born and have always lived in Somersworth. I commenced navigating the river from South Berwick to Portsmouth about twenty-five years ago, and for twenty years past it has been my whole business when the river was open. During this last period of time I have run a packet regularly almost all of the time. From my experience and observation, I should say that the navigation of the river was made difficult and dangerous by the Ports. bridge. I have never met with any material accident. I have broken a yard and torn my sail.

About the year 1826 I went down in a gondola in company with two other gondolas. The one commanded by Isaac Hobbs, loaded with timber, was capsized against the bridge. The one commanded by Walter Abbott, lost about a cord and a half of wood overboard. The one commanded by myself got aground, but we got down without damage. I have seen a number of gondolas lying against the bridge capsized. I have seen wood, timber, and hay at various times floating down the river below the bridge. I was present near by when David Lord was drowned, soon after the bridge was built. I was once passing the bridge when Mr. Freeman in a boat with a boy was capsized. It was about six years ago. When the tides are full at high water, we cannot go under the arch with packets. This is true of the packets from Dover and Durham and New Market. Full tides happen twice a month, and sometimes continue a week. We are not often there at high water. In order to be there at high water, we must start from home two hours before high water, and have a favorable breeze. We usually start at high water, and then there is no difficulty about the height of the arch. We sometimes, on account of the time of day and other causes, want to pass the arch at high water, but we have to lay by to let the water fall.

MOSES VARNEY.

Sworn July 25, 1842.

I, Henry Card, aged forty years, depose and say: That I was born on Dover point, and there lived until about twenty years of age; and then moved to Elliot, where I lived three years; and then moved to Dover landing, where I have lived ever since. As soon as I was large enough I commenced navigating the river, and for fifteen or twenty years past it has been my principal business until the present year. For about fourteen years I have been in a packet between Dover and Boston, and for about eight years of that time I have been master of a schooner. I

should judge that not more than one-third as many gondolas passed Dover point now as did as long ago as I can remember. I have quite often seen fifteen or twenty at one time coming up the river Piscataqua. It is difficult getting to Portsmouth bridge draw, and it cannot be freely and easily passed. Accidents frequently happen, and damages are occasioned by the bridge to the vessels. On one occasion we broke our main boom by striking against the bridge. About a year ago I was at the bridge, and saw a sloop belonging to York, loaded with staves. She had a hole in her side and filled. She was loaded at Dover and sailed down before us, but on the same tide. I did not see her strike the bridge, but saw the hole said to have been made in her by the bridge. I have seen two gondolas strike and capsize against the bridge. Four or five years ago I was laying at the bridge, and in the night I was awakened out of sleep by cries for help. I and some of the men went in a boat to the place whence the cries proceeded. Two men were then hanging on to the timbers under the bridge, and one had climbed up to the top of the bridge. A gondola lay on the upper side of the bridge capsized. She was loaded with wood. She was commanded by Mr. Abbott, of South Berwick. If the bridge were not there we could come up from Portsmouth to Dover landing with fair wind in two hours. We consider ourselves fortunate if we get through the bridge in one hour after we begin to take in the sails. That hour's delay often prevents our coming up to Dover with that tide. And sometimes, in consequence of being delayed in passing, the wind has changed, and thereby we have been further delayed. I have passed through the passage between Ham's island and Portsmouth main land, and from the narrowness of the channel, the shallowness of the water, and the force and direction of the current, it is not considered a safe passage for ordinary use. The current of the tide on the flow and the ebb is diagonal as it passes through the draw, and at the angle of about twenty-two degrees, I should think. The planking up of the sides of the draw, which was done last summer, facilitates the passage through the draw. If a buoy were placed below the bridge, it would still further facilitate the passage. I believe I have passed through all the draws at and around Boston, and there is no one where the difficulty in passing is at all to be compared to this. Those bridges at and around Boston have a buoy on each side of the bridge, where there is any current. I have been through the railroad draw, near the Boston and Lowell railroad depôt in Boston, and I was detained there a half hour, as the train was expected, they refusing to hoist the draw until the cars arrived.

On being cross examined: Taking all the branches of Piscataqua river into consideration, there is not more than one-half the quantity of wood and lumber seeking market below that there was as long ago as I can remember. There is but little wood and lumber that now goes down the Cochecho. Most of what lumber now goes down goes in the packets coastwise to Boston.

I do not know whether the bridge obstructs the vessels or gondolas

most, but the most serious losses have happened to the gondolas; comparatively little property has been lost by coasters.

I know of nothing in the location or structure of the draw that could be altered for the better, excepting the placing a buoy below the bridge. HENRY CARD.

Sworn July 15, 1842.

I, Moses C. Young, of Dover, aged thirty-three years, depose and say: That I am a native of the town of Dover, and have always lived there. Since twelve years of age, boating, gondolaing, and packeting have been my principal business. I have been employed on the Cochecho river between Dover and Portsmouth; four years I run in a packet, five years in a sloop gondola, and the rest of the time I run in a gondola. I should say that the navigation through the Portsmouth bridge is difficult and dangerous to property and life; it is a great obstruction to the navigation of the river; the best of men meet with difficulty; accidents used to occur weekly, and almost daily; but now the river is mostly navigated by men of good judgment as to the tides and currents. I have suffered there by several accidents myself; in 1825 or 1826 I capsized a gondola load of boards against the bridge; this accident was occasioned by the sudden springing up of the wind, which took us out into the main current, and against the bridge; about two thousand feet were broken and lost; she had on thirty-seven thousand feet of boards. At the same tide Capt. Rogers had a three-masted schooner go down; she was towed down by a gondola. The schooner was anchored near the bridge; the gondola swung round against the bridge; the schooner tripped her anchors, and went against the gondola, and smashed her against the bridge; twelve hands were in the gondola; one of them got his leg badly injured. I once went against the bridge with a sloop gondola; it was about 1834; we were attempting to reach the arch; there was a light wind, and we misstayed, and thereby could not reach the arch; the force of the current took us against the bridge; we cut away the mast, and let her swing. The sails and rigging were somewhat injured, and some other damage was done.

I once went against the bridge with the packet Strafford. It was in 1835 or 1836; a hole was broken in her, and the sail was torn. The same year I broke the end of the yard. I have had a number of oars broken, and received damage more or less every year. About 1832 or 1833, I saw a boat loaded with sauce, and containing four persons from Elliot to Portsmouth; she upset, and one of the women was drowned; her name was Foster. I have frequently seen gondolas capsized against the bridge; I have also seen them broken, lying against the bridge; I have also heard men screaming, and been and helped them off from under the bridge in the night. This was about 1834 or 1836. At other times I have heard screams from the bridge, and went to their assistance, but help was obtained before I got there. I commanded the sloop gondola from 1831 to 1833, called the Express. She averaged about four trips each week. From 1833 to 1837 I

commanded a packet; she run six trips each week for eight months in a year.

On a full ebb tide, the water on the upper side of the bridge is from twelve to fifteen inches higher than on the lower side of the bridge; on a full flood tide the water on the lower side of the bridge is about a foot higher than on the upper side; I came to this conclusion from the appearance of the posts of the bridge, and the various substances growing on them. It is a common thing with a gondola to lose a tide in going down and in coming up, in consequence of the necessity of passing the bridge at a particular time of the tide; and thereby we are put to expense in maintaining hands at Portsmouth. As the tide rises and falls the direction of the current changes continually; this is occasioned by the tide passing round points of land, and as the tide rises and falls, eddies are made, and thereby the current changes as the eddies enlarge or diminish. It requires great experience to ascertain the precise time when to pass the bridge.

On being cross examined: I have passed the bridge at all times of the tide. The accidents that I have described above took place generally in consequence of attempting to pass the bridge on the strength of the tide. The draw has been improved, and is in as good a place as could be had, with the present location of the bridge. The draw is well constructed. There is no difficulty in passing the arch near Ham's island, if we get out of the current and into the eddy, if the captain is skilful. High winds aggravate the difficulty in getting through the bridge, and occasion a portion of the disasters.

MOSES C. YOUNG.

Sworn July 22, 1842.

I, John Sayles, of Dover, aged thirty-eight years, depose and say: That I was born in Grafton, in the county of Grafton, and went to Portsmouth to live twenty years ago. That I lived there in the occupation of a truckman three years, then moved to Dover, where I have ever since lived. For three years after moving to Dover, I was employed as a truckman, and ever since I have been employed on the river between Dover and Portsmouth, with the exception of two years of the time, and during these two years I was occasionally up and down the river.

Generally, I have been in a packet in the summer, and in a gondola in the winter. In the summer we made a trip to Portsmouth and back each week day, and in the winter we calculated to make a trip in two days. The navigation of the river is made dangerous to life and property by the Portsmouth bridge. The bridge is not so constructed as to be passed easily, freely, and safely. It is my opinion that there should be no bridge below Dover point. [Objected to.]

A bridge above the narrows would not be so bad as at the place where the bridge now is. While I lived at Portsmouth two gondolas, loaded with wood, were upset against the bridge. In the year eighteen hundred thirty-two, or thereabouts, when coming up the river from Portsmouth, in a packet, she struck a spike sticking out of the bridge, and

made a hole in the packet, and the water came in so freely that we were under the necessity of going back to Portsmouth to repair. Once in coming up through the bridge I broke the yard and tore the sail. The expense of repairs this time was ten dollars, besides loss of time. Once in going down under the bridge in the winter time, my gondola struck and threw me overboard; I caught hold of the stern line, and thereby was saved. I should think that we sustain some slight damage, more or less, nearly one-third part of the times we pass through the bridge.

Since I have lived in Dover five different steamboats have commenced running regularly from Dover to Portsmouth. They did not run but a short time each; I went in two of them, but the owners stopped them on account of the dangers incident to the passing of the bridge. The steamboats were injured in passing, and I know of some women who refused to go on account of the bridge. It was common talk that people were afraid to go. One of the steamboats run a month or more. The captain of one, on account of the difficulty of passing the bridge, used, for a time, to land above the bridge, north of Rindge's wharf, on Christian shore; but at low water it was difficult to get in or out, and he left off landing there. I heard the captain of the Tom Thumb, Mr. Porter, say, that if it were not for the bridge he would run regularly, but the damages sustained in passing the bridge took off too much of the profits. This occurred when I was passing up and down the river on board of her. Porter was here with this steamboat two different seasons in succession. I have heard the captains of all those steamboats say, that they would not, as owners, run their boats on account of the dangers at the bridge; but if any person would buy out their interest they would go as commanders. Were it not for the bridge a small steamboat would have done good business during the time I have been on the river. These steamboats drew from two feet six inches to four feet of water, and could make a passage from Portsmouth to Dover in an hour, were it not for the bridge. They could come up to Dover landing at half tide. I acted as pilot on board the steamboats; while I so acted, the keeper of the draw was requested to hoist the draw as soon as we hove in sight and rung the bell, so that we might go through without casting anchor or making fast; the keepers, both Mr. Marden and Mr. Hurd, refused to do so, alleging that it was against their orders. The delay thus occasioned would be about half an hour.

On being cross examined: Those steamboats were named Tom Thumb, Dolphin, Suffolk, Minerva, and Jefferson. Porter commanded the Tom Thumb the two first seasons she was here; Childs commanded her the third time she came; Joshua Connor commanded the Dolphin; Chs. Bolles commanded the Suffolk; Morse commanded the Jefferson; I was pilot on board the Jefferson and Minerva; she was commanded by Colby; the Jefferson was the largest, and about seventy tons burthen. The Dolphin was the smallest, and of about forty tons.

At still water there is no great difference between passing the Portsmouth bridge and the Piscataqua bridge. I never had occasion to pass

any other. Capt. Bolles is dead; I do not know where the other captains reside.

JOHN SAYLES.

Sworn July 25, 1842.

STATE OF NEW HAMPSHIRE, *ss:*

To the honorable justices of the superior court of judicature.

Humbly show the subscribers, Directors of the Portsmouth Bridge, that by the act of the 28th of June, 1819, entitled "an act to incorporate the Proprietors of Portsmouth Bridge," it is provided that an arch shall be constructed in said bridge, in a convenient place, and of sufficient dimensions to permit all boats, gondolas, and small craft freely to pass under the same, a plan of which shall be exhibited to, and approved by, the justices of said superior court, before said bridge shall be erected. That the said Proprietors being about to erect said bridge, propose, in compliance with said act, to construct an arch in said bridge one hundred and sixty feet from the northerly end of Ham's island, to be fifty feet in width and twenty-five feet in height above low water mark, agreeably to the plan hereunto annexed, in which plan said arch is marked C. Wherefore the subscribers pray that said justices will approve of said plan of said proposed arch, and certify their approbation of the same.

EDW. CUTTS,
J. MASON,
JACOB CUTTER,
ISAAC WALDRON,
THOS. HAVEN,
EDW. CUTTS, Jr.,
HENRY LADD,
Directors of Portsmouth Bridge.

April 9th, 1832.

STATE OF NEW HAMPSHIRE, *Hillsborough, ss:*

April term.

Having examined the within petition and the plan annexed, we hereby approve of said plan and the arch for the passage of gondolas, boats, and small craft therein described.

WM. M. RICHARDSON,
L. WOODBURY,
SAML. GREEN,
Justices of Sup. Ct.

[For plan, see original, between pages 60 and 61.]

Depositions duly taken before Albert R. Hatch, esquire, on behalf of the defendants, and returned and certified by him pursuant to the foregoing commission, due notice having been given, and the counsel of the parties present, except at the taking of the depositions of Samuel Hill and John Lowe, jr.

I, Levi Woodbury, of Portsmouth, in the county of Rockingham, and State of New Hampshire, of lawful age, depose and say: That I was one of the judges of the superior court of this State, A. D. 1822; that the body of the certificate of approval of the arch of the bridge annexed to the plan of the same, hereunto annexed, is in my handwriting; that I, with William M. Richardson and Samuel Green, who were judges of said court with myself, approved the annexed plan of said arch, and signed said certificate. The signatures of said Richardson and Green are in their own handwriting. The said approval was in the year 1822, as it purports to be.

On being examined by plaintiff's attorney deponent saith, that he does not recollect whether any notice of the consideration of said plan was given to persons having adverse interests, or whether any hearing was had upon the same.

LEVI WOODBURY.

Sworn October 29, 1842.

I, Isaac Waldron, of Portsmouth, in the county of Rockingham, and State of New Hampshire, of lawful age, depose and say: That I was one of the directors of the Portsmouth bridge at the time of its erection, and the managing agent in its erection; that the arch of said bridge was constructed in conformity to the part of the plan hereunto annexed, which is marked C; which plan, by the certificate to it annexed, purports to have been approved by the justices of the superior court.

ISAAC WALDRON.

Sworn October 29, 1842.

Edward Cutts, of Portsmouth, in the county of Rockingham, and State of New Hampshire, being duly sworn, deposes and says: That he was elected a director of the Portsmouth bridge at the first meeting of the Proprietors for the choice of directors in July, 1821, and continued a director of said bridge by successive annual election until July, 1842; that he usually attended the meetings of the directors, and during the last eleven years was president of the board; that he, as a special agent of the directors by their appointment, attended the June sessions of the legislature of New Hampshire in the years 1825 and 1826, for the purpose of opposing the prayer of certain petitions and memorials of certain persons residing at Dover and other towns, situated on the several branches of the Piscataqua river. That at the June session of the legislature in the year 1826, he agreed with the members of the legislature from those towns in the counties of Rockingham and Strafford,

principally interested in the navigation of the different branches of the Piscataqua river, that they should, after the adjournment of the legislature, send delegates from their several towns to Portsmouth, to confer with the directors of the bridge, as to the alterations proper to be made in said bridge, in order to render the navigation of said river under and through the said bridge safe and easy; that about the middle of July, 1826, delegates from the towns of Somersworth, Dover, Durham, New Market, and Exeter, met the directors of the bridge at Sothers' tavern, in Portsmouth, and then proceeded to examine the bridge, accompanied by Cyrus Frink, esq., an experienced and skilful builder of bridges, and after an examination of the bridge, and the making of inquiries of persons accustomed to navigate the river, the delegates from the above towns adjourned their meeting, and subsequently made their report, a copy of which, purporting to be signed by John Rogers, as chairman, and Asa Freeman, as secretary, is hereunto annexed, marked A. That at a meeting of the directors of said bridge, holden on the 5th of August, 1826, this deponent was appointed a committee to examine the report submitted to the directors by the committee from the towns principally interested in the navigation of the different branches of the Piscataqua river, and to ascertain from an engineer the practicability of making the proposed alterations in the bridge, the cost of the same, &c.; and also, if necessary, to propose such plan as may be deemed practicable, as a substitute for that which had been recommended. That on the 8th of the same August he addressed a letter, a copy whereof is hereunto annexed, marked B, to Cyrus Frink, esquire, and that he, this deponent, made his report to the directors of said bridge, at a meeting holden on the 8th day of November, 1826, a copy whereof, marked C, is hereunto annexed, and that his said report was accepted on the 8th of November; and the directors at that meeting voted that Nathaniel B. March be authorized to contract for timber and other materials necessary for making the alterations in the bridge, as reported by this deponent.

That in the year 1827 and in 1828, the alterations which this deponent recommended to be made were completed, except the sinking a pier to make fast to; and instead thereof a buoy fastened to an anchor was placed above the bridge, and near the draw of the bridge, and the draw of the large bridge was widened. That according to this deponent's belief and recollection, the expenditures in making the said alterations exceeded the estimated expense a considerable sum, but the precise amount he is not able to state.

On cross examination by the complainant's counsel, the deponent saith, that the facts stated in the amendment to the complainant's bill, which amendment purports to have been allowed by J. Parker, at the superior court of judicature, in the county of Grafton, at the July term, A. D. 1841, are true; but that large vessels have not been accustomed to go higher up the river than the Portsmouth bridge, and generally not so high; but during the last war with Great Britain, several large

vessels were carried up the river, and among others the frigate Congress was taken up three or four miles above the bridge and dismantled.

EDW. CUTTS.

Sworn Nov. 3, 1842.

Paper marked A.

The committee appointed by the members of the legislature from those towns in the counties of Rockingham and Strafford principally interested in the navigation of the different branches of the Piscataqua river, to confer with the Directors of the Portsmouth Bridge as to the alterations necessary to be made in said bridge, in order to render the navigation of said river more safe and easy, have met the directors of said bridge, and have obtained such information respecting the causes of the difficulties and dangers attending the passage of vessels, boats, and other water craft, through and under said bridge, as induces them to submit the following report:

That, in their opinion, no alterations which can be made in said bridge would satisfy the public, or restore to them the full enjoyment of those rights and privileges which they possessed in the free navigation of said river prior to the erection of said bridge; but that probably some alterations and improvements might be made which would, in some measure, lessen the danger and difficulty of passing under said bridge; and that, in their opinion, the following alterations ought to be made:

1st. Another suitable draw ought to be made in said bridge on the New Hampshire side of the river; and the draw on the easterly side of the river should be so altered as to hoist a greater width than at present; and they would recommend that anchors of suitable size be placed above and below each of said draws, with suitable buoys and apparatus for vessels passing to make fast their warps, without dropping their anchors.

2d. The passage way on the westerly side of the river, between sections thirteen and fourteen, ought to be widened twenty feet.

3d. They are further of opinion, that two additional passage ways should be made between sections twenty-six and thirty-four, of not less than seventy feet each, and that the pier between said passage ways should be extended, above and below the bridge, to a greater point, and that said passage ways should be raised at least sixteen feet above high-water mark.

4th. That all the passage ways should be winged off on either side, above and below the bridge, and that they should all be planked up from low water to above high-water mark.

5th. That the piers above and below the draws ought to be floored over with suitable plank.

JNO. ROGERS, *Chairman.*

July 28, 1836.

Ordered, by the committee, that a copy of the above report be trans-

mitted to the clerk of the Proprietors of the Portsmouth Bridge, and that the same be published.

A true copy—attest:

A. FREEMAN, *Sec'y.*

Paper marked B.

PORTSMOUTH, *Aug.* 8, 1826.

CYRUS FRINK, esq.

SIR: At a meeting of the Directors of the Portsmouth Bridge, holden on the 5th instant, I was appointed to examine the report submitted to the directors by the committee from the towns principally interested in the navigation of the different branches of the Piscataqua river, and to ascertain from the engineer the practicability of making the proposed alterations in the bridge, the cost of the same, &c.; and also, if necessary, to propose such plan as may be deemed practicable, as a substitute for that which has been recommended.

In pursuance of that appointment I now transmit to you a copy of that report, and wish you to ascertain whether the proposed alterations can be made consistently with the security of the bridge and the convenience of travellers in passing over the same. If the alterations are practicable, state the mode by which you contemplate to make the same, and the estimated expense of materials and labor for each. If a part of the proposed alterations are impracticable, will you state why they are so, and the expense of such as can be effected, and their probable utility to the river navigation, and inconvenience to travellers passing the bridge; and also state what alterations can be made to lessen the difficulty and danger in passing under or through the bridge, which in your opinion the directors, taking into consideration the present and probable future tolls, ought to make. As early an answer to these questions as your convenience will admit is requested.

I am, dear sir, your obedient servant,

EDW. CUTTS.

Paper marked C.

The undersigned, appointed by the Directors of the Portsmouth Bridge to examine the report which has been submitted to the directors by the committee from the towns of Dover, Exeter, &c., and to ascertain from the engineer the practicability of making the proposed alterations in the bridge, the cost of the same, &c.; and also, if necessary, to propose such as may be deemed practicable as a substitute for that which has been recommended, reports:

That immediately after his appointment he addressed a letter to Cyrus Frink, esq., the person who superintended the building of the bridge, and one who is supposed to have more practical knowledge relative to the building of bridges over tide waters than any other person in New England; a copy of the letter to Mr. Frink, and his answer thereto, ac-

companies this report. From the contents of Mr. Frink's letter, and the result of several conferences with him, the undersigned is of opinion that some of the proposed alterations cannot be made consistently with the permanent continuance of the bridge; others of them, if made, would render its standing doubtful in strong tides, and greatly incommode travellers in passing the bridge; and one of the measures recommended by the committee, and intended to aid vessels in passing through the draw, would not, if adopted, answer the object which was contemplated.

The making of another draw on the westerly side of the river, if it could be done without endangering the bridge, would *would* not probably, in any considerable degree, accommodate the vessels desirous of passing through the bridge. The proposed location is in the strength of the tide, which is so rapid as to endanger the safety of the vessels which might attempt to pass, and would at no time be preferred by persons acquainted with the various currents and tides in the river, to the present draw. The separating the bridge and leaving the middle in a depth of water from fifty to sixty feet, and in the strength of the tide without any connexion with the abutments, would in all probability be attended with an immediate change of its position, and at the first spring tides render the bridge impassable. The place where the present draw is constructed was proposed by the engineer who superintended the erection of the bridge, and was not decided on by the directors without great deliberation and consultation with persons who had the most experience in navigating the river. This draw is as wide as the one in Piscataqua bridge, or in bridges in general. It is of easy access, and out of the strength of the tide.

The placing of anchors with buoys above and below the bridge for vessels to make fast to, would not be attended with much expense, nor much benefit. The catching of the buoys without hoisting out a boat would be always attended with hazard, and in some places where they have heretofore been used they are now abandoned. The sinking of a pier on the margin of the channel on the eastern side of the river, about 300 feet above the bridge, to which vessels might put a warp with ease and safety, would facilitate their passage through the draw, and this pier would also break the ice which is formed in the creeks between the bridge and the neck.

The making two additional passage ways between sections 26 and 34, of 70 feet wide, and raising an arch over each of the passage ways of sixteen feet above high water, would, if accomplished, cost a sum exceeding one half of the original expense of building the bridge, and would so weaken the bridge as to render it insecure against the assaults of strong tides; and, in addition to the expense, the raising of an arch sixteen feet above high water, would so impede and endanger the passage over the bridge for carriages and teams in wet and frosty weather, as to greatly counterbalance any advantage which boats and vessels might gain.

The erection of the bridge was an enterprise for the accommodation

of the public. Its first projectors thought more of its convenience to travellers and its advantage to the trade of the town, than of dividends which might be made. The interest of the boat navigation of the river was also thought important, and it was intended to provide for its conveniently passing the bridge. That the hazard and trouble of passing the bridge is greater than was originally expected is apparent, and the largest proprietors, it is confidently believed, are desirous of making such alterations for the more safe passing under the bridge by boats and gondolas, as would be proper, and can be defrayed from the income of the bridge. The alterations which the undersigned intends to recommend will, in addition to the money and materials now on hand, require the tolls of the two following years to defray. The making an expenditure on the bridge during the next season, requiring an anticipation of tolls beyond that period, cannot be reasonably requested by the persons concerned in the river navigation.

The agents of the directors who attended the last session of the legislature, explicitly stated to one or more of the representatives from Dover, that they were not authorized to assure them that anything further than the making another wide passage way should be done. And notwithstanding the report of the committee from the towns of Dover, &c., it is hoped that the alterations about to be recommended will prove satisfactory. If the inconveniences now experienced are not in a great measure obviated by the contemplated improvements, the directors will doubtless be willing to make such further alterations as experience may show to be necessary. Without further comment upon the particular recommendations of the committee from Dover, &c., the undersigned would propose to the directors:

1st. To widen the present fifty feet passage way by taking up one of the sections next adjoining the passage way.

2d. To make another passage way of seventy feet in width between sections 28 and 31, and of as great height as can be consistently with the security of the bridge, and the convenience of teams and carriages in passing. This height will probably be from eight to ten feet above high water; and that the sides of both of these passages be planked up from low to above high water.

3d. That a new pier of suitable dimensions be sunk above the bridge for vessels to make fast to, and that the piers at the draw be planked. The whole cost of these alterations is estimated by Mr. Frink at the sum of four thousand two hundred and fifty dollars.

EDW. CUTTS.

Nov. 8, 1826.

I, Francis Marden, of Portsmouth, in the county of Rockingham, and State of New Hampshire, of lawful age, depose and say: That for a little more than six years, from A. D. 1828 to A. D. 1834, I was toll gatherer at the Portsmouth bridge. During the time I was there the four lamps usually kept upon said bridge were lighted every night, and kept lighted by every exertion. On one occasion, during a very

heavy storm, I had three hands to assist me, but succeeded in putting up only one; on every other night all four of the lamps were lighted. The storm on that night was so severe that no person could pass in a boat upon the river; a boat could not have lived. All the persons who were in town from up the river, went home that night by land across the bridge.

FRANCIS MARDEN.

Sworn Oct. 29, 1842.

I, Thomas Hurd, of Portsmouth, in the county of Rockingham, and State of New Hampshire, of lawful age, depose and say: That I have been toll gatherer at the Portsmouth bridge since April, A. D. 1835, and am such now. During all that time I have always lighted and put up the four lamps usually kept upon said bridge in the night, except on a few occasions, when in consequence of the weather I have been unable to get them all up. On such occasions I have never known any boat or vessel to pass upon the river. On the few occasions when I have been absent, I have left a person in charge to put up the lamps.

Sworn Oct. 29, 1842. THOMAS HURD.

I, Isaac Waldron, of Portsmouth, in the county of Rockingham, and State of New Hampshire, of lawful age, depose and say: That the Portsmouth bridge was built under my supervision as agent for the corporation, A. D. 1842. The bridge was built in conformity to a plan previously drawn up and approved by the judges of the superior court. Previously to the location of the draw in said bridge, an empty boat was set adrift in the presence of the directors of the bridge, from the salt works, about half a mile above the site of the bridge, upon the ebb tide; I think it was about half ebb, and the track of the boat where it passed the site of the bridge was observed. It drifted across the spot where the draw is located, or very near to it. The draw in said bridge is located out of the strength of the current of the river, and in the best possible place for a draw, to be used both at ebb and flood tide. If the draw were to be located again, I do not think it posssible to locate it in a better place.

This bridge is a great public thoroughfare, and there is a great and increasing amount of travel across it. It connects the States of New Hampshire and Maine. The great mail route from Portland to Washington passes across this bridge.

Sworn Oct. 6, 1842. ISAAC WALDRON.

The part of this deposition relating to the plan therein named, was objected to by the complainant's counsel at the caption.

A. R. H.

I, Samuel Lord, of Portsmouth, in the county of Rockingham, and State of New Hampshire, of lawful age, depose and say: That I am clerk of the Portsmouth bridge, and treasurer of the same, and

320.

am also cashier of the Piscataqua bank, at which bank the tolls collected at said bridge have for at least ten years last past been deposited. That the amount of said tolls so deposited in the year 1831 amounted to - - - - - - - $4,663 98

In the year ending July, 1839, they were - - 5,995 93

In the year ending July, 1840, they were - - 6,495 63

In the year ending July, 1841, they were - - 7,010 74

In the year ending July, 1842, I think the tolls were of a larger amount than in 1841.

For about six years past I have been treasurer of the Portsmouth Company, a cotton manufactory located in South Berwick, running about 7000 spindles. There have been sent up the river to said company, under my direction, about twenty-five hundred bales of cotton annually, and the goods manufactured by said company have been sent down in the same way. When the Berwick river was open the goods have been sent up under said bridge, and when said river was closed by ice our goods were transported across said bridge by land to and from South Berwick. We never have lost any thing in transporting our goods under said bridge.

Sworn Oct. 6, 1842. SAMUEL LORD.

I, Alexander Rice, of Portsmouth, in the county of Rockingham, and State of New Hampshire, of lawful age, depose and say: That I have resided in Portsmouth ever since the Portsmouth bridge was erected, and have been during that time the agent for the stages which run over said bridge; that the erection of said bridge has been, and still is, of great public utility; that prior to the erection of said bridge I resided at my father's at the ferry, on the Kittery side, my father being the owner of the ferry. The said ferry was several times during every winter, since my recollection, rendered impassable in the horse boats, on account of the wind and weather. The travel over the bridge has very much increased within a few years past. There are two regular lines of stages which pass every day, except Sundays, each way over the bridge.

On being cross examined by the counsel for the plaintiffs, deponent says, that I was not in 1840 an owner in said bridge; that I have sometimes known the ferry boats to be detained by the ice or weather two days at a time. If there was a steam ferry plying across the river constantly, I think that the difficulty of the passage on the account of the ice and weather would be obviated. The ferry boat used as above spoken of was a boat rowed by men.

Sworn Oct. 6, 1842. ALEX. RICE.

I, William D. Furnald, of Portsmouth, in the county of Rockingham, and State of New Hampshire, of lawful age, depose and say: That I am about thirty-five years of age; that I was born in Kittery, in the State of Maine, about a mile above the Portsmouth bridge. I have lived in said Kittery, or in said Portsmouth, during my whole life, and

for the last eleven years I have lived in Portsmouth. I have frequently had occasion to pass up and down the Piscataqua river, both before and since the erection of the Portsmouth bridge. For two years and one half at one time I lived at Kittery aforesaid, and worked in Portsmouth, and had occasion to pass under said bridge twice a day, to and from my work. I never met with any difficulty whatever in passing under said bridge. I recollect the time Wm. B. Nutter, son of the widow Abigail Nutter, was drowned near said bridge. A woman who was in the boat with said Nutter at the time was brought to my house on being taken out of the river. Her account of the manner in which the accident happened was, that said William and another boy with her in the boat got into a dispute which should be master, and quarrelled; she was frightened herself, and that before they were aware of it the boat was against the bridge. She said the accident happened from carelessness. I knew John Spinney who was drowned several years since at said bridge; he was reputed to be a man of intemperate habits.

Sworn Oct. 6, 1842. WILLIAM D. FERNALD.

I, Edward F. Sise, of Portsmouth, in the county of Rockingham, and State of New Hampshire, of lawful age, depose and say: That I am a merchant in said Portsmouth; that I have been forwarding agent to the Cochecho Manufacturing Company in Dover, New Hampshire, to the New Market Manufacturing Company, and also to the Great Falls and the Exeter Manufacturing companies. I have acted as agent for forwarding cotton and coal for the Cochecho Manufacturing Company in Dover for ten years past. There has been a large amount of those articles sent up by me in open gondolas through and under the Portsmouth bridge every since I have been agent to said company, and I have never known a loss or damage to happen to said goods on account of passing through said Portsmouth bridge to the amount of one dollar during the whole time I have been forwarding agent.

E. F. SISE.

Sworn Oct. 6, 1842.

I, John Lowe, junior, of Exeter, in the county of Rockingham, and State of New Hampshire, manufacturer, depose and say: That I am forty-five years of age; that I am the agent of the Exeter Manufacturing Company, a corporation transacting business in the town of Exeter, in this county; and that I have been agent for said company for twelve years last past. During all said time our cotton, coal, and other goods for said factory, have been brought up from Portsmouth by water in a gondola packet, through and under the Portsmouth bridge every year, as long as the river to Exeter was open, or not frozen by ice, until we commenced sending our goods up to Boston by the upper railroad, which is now finished into Exeter. And during said time, since I have been agent of said company, I have sent down the river, and received from the Portsmouth wharves up the river, goods to the amount of

about two millions of dollars, all of which have passed through and under said bridge in gondola packets. And the whole injury done said goods during all of said time would not, to my knowledge, amount to one dollar. But hereafter we do not calculate to use the river to transport our manufactured goods, as we can send them direct to Boston by the railroad with much less trouble, and in one-tenth of the time.

JOHN LOWE, Jr.

Sworn Oct. 5, 1842.

I, Samuel Hill, of Elliot, in the county of York, and State of Maine, of lawful age, depose and say: That I am sixty-five years of age; that I am by occupation a farmer; that for about forty years past, the produce of my farm in said Elliot, has been brought to Portsmouth to market; that for the last twenty-five years the amount of the fresh provisions and other produce of my farm which I have carried to market, will average, as I think, the value of five hundred dollars a year; that I attend the Portsmouth market very frequently, two or three times a week, and sometimes oftener; that I am well acquainted with the Portsmouth bridge, and the great advantages the farmers derive from being able to cross the Piscataqua river by a bridge instead of a ferry; said bridge is of great advantage to me, and I have always heard it spoken of as of great advantage by the people of Elliot; that there is a great deal of travelling across said bridge from the State of Maine into the State of New Hampshire, and the reverse, and that said travel has greatly increased since the erection of said bridge. I well remember the dangers and difficulties attending the passage across said river by the ferry, previous to the erection of said bridge; in taking over horses and carriages, carts and wagons, and also droves of cattle and sheep, it was very troublesome and expensive, and occasioned a great loss of time; and was difficult to cross at all times of tide, more particularly when the wind blew hard. Now, we have no difficulty of that sort; the farmers in Maine, and all others, can cross the Portsmouth bridge at all times, day or night, fair weather or stormy weather, it makes no difference; we are never hindered on account of the bridge; it makes a good highway for all travellers to pass in safety, at one-half the price that was charged over the old ferry. When said bridge was built, about twenty years since, so far as my information extended, and I was acquainted over a large tract of country in this neighborhood, it was regarded by the people in this part of the county of York as a very great public improvement, and as facilitating the intercourse between that section and Portsmouth, it being a great thoroughfare between the States of New Hampshire and Maine. Previous to the erection of said bridge, in attempting to cross at the ferry to said Portsmouth, the ferrymen on one occasion were compelled to land me upon the island, now called Badger's island, and I was obliged to walk across said island, and take another boat to cross to Portsmouth. The travelling across said bridge is very great, and it is the great United States mail route from Maine to Georgia. The navy yard is also connected with Portsmouth by

this bridge, and a small bridge to the navy yard island. If this bridge should be taken away, the loss to the citizens of Maine living in York county would, in my opinion, be very great; their farms would depreciate in value very much; their privilege in going to the Portsmouth market would be nearly cut off, as the people would not be willing to cross the ferry again; since the travelling has so greatly increased within the last twenty years. I live within one mile of the Piscataqua river, and about five miles from the Portsmouth bridge.

SAMUEL HILL.

Sworn Oct. 4, 1842.

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

December term, 1843, superior court of judicature.

THE TOWN OF DOVER
vs.
THE PROPRIETORS OF PORTSMOUTH BRIDGE et als. } In equity.

It is moved by the complainants, that the complainants' bill aforesaid may be amended, by inserting on the third page of the printed case, after the words "to comply with such requests," and before the words "all which actings and doings." the following words, to wit:

"And they pretend that said corporation, called the Proprietors of Portsmouth Bridge, are permitted and empowered to erect said bridge by an act of the legislature of New Hampshire, passed in the year 1819, and also by an act of the legislature of the State of Maine, passed in the year 1821, each of said acts being entitled "an act to incorporate the Proprietors of Portsmouth Bridge;" and that by each and either or both of said acts, the right of building and maintaining a bridge across said Piscataqua river, between said towns of Portsmouth and Kittery, was fully granted to said corporation, and that they have built and do keep up said bridge, in conformity with the requirements of said acts: whereas your orators charge and insist, that the said acts were for purposes of intercourse and commerce between said States; and that said intercourse and commerce to be carried on over and by way of the said bridge or bridges, therein respectively mentioned, is charged by the provisions of said acts with certain tolls or duties therefor, payable to the proprietors; and so it will appear when said acts shall be produced.

And your orators further charge and insist, that at and long before the time of the adoption of the Constitution of the United States, there were in each and every of the thirteen States then forming this Union, a port or ports of entry and delivery, with havens and harbors established, recognised, and known in law, for the carrying on and regular conducting the trade of said States, respectively, with foreign nations and coastwise with each; among which ports so known and established, said Portsmouth with its haven or harbor was one.

That by said Constitution it is declared that one object thereof is to provide for the common defence.

That Congress shall have power to lay and collect duties and imposts; to provide for the common defence and general welfare of the United States; to regulate commerce with foreign nations and among the several States; to define and punish offences against the law of nations; to provide and maintain a navy; to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof; that no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; that no State shall enter into any treaty, alliance, or confederation; nor without consent of Congress, lay any duties on imports or exports, (except what may be absolutely necessary for executing its inspection laws;) keep troops or ships of war in time of peace; enter into any agreement or compact with another State; or engage in war unless actually invaded, or in such imminent danger as will not admit of delay; that the United States shall protect each of the States against invasion; that the Constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding. And your orators further charge and insist, that by force of the statutes of the United States for regulating commerce with foreign nations and the coasting trade between the several States, and also for the collection of duties on imports and tonnage, the natural current, and channel, and flow of the navigable waters between the sea and the respective ports thereby established, with their harbors and inlets, ought at all times to be open and unobstructed, unimpeded, and free from any artificial or intended obstacle, erection, or annoyance whatever.

That the laws of Congress establishing ports of entry and delivery are a regulation of commerce as well as means of collecting revenue; they look also to the relations of the United States with foreign nations as well in war as in peace; to the preservation of peace and amity with them; to the stipulations of treaties; to the duties of humanity and hospitality to strangers; to the benefit of refuge and asylum for mariners in distress, of whatever nation; to the fitting out, receiving, harboring, stationing, mooring, and sheltering public ships of war; and to the protection and defence of the country, as well as to the convenience of navigation and commerce and the collection of revenue; that the establishment of seaports does necessarily involve and include the admission of all ships and vessels of every description which may be allowed to trade in them from the sea, or which by the laws, treaties, or Government of the United States may be authorized or permitted to come into such ports, and the right to the free and unobstructed use of the navigable waters, and of all natural facilities of navigation, passage, and access of such vessels to and from such ports, their havens, waters, and shores, and every part thereof from and to the

sea, without the interposition of any hindrance, impediment, or annoyance whatever, not expressly authorized by the Constitution or laws of the United States, or necessary in the administration and course of justice. And your orators, also, further charge and insist, that by the general principles of public and international law, the inhabitants of contiguous independent States and territories bordering on a navigable river, or arm of the sea running between them, of common right, are, on each side, entitled to the free and common use of such navigable waters, for their ships and vessels to sail and pass over, through the whole breadth of such waters, or at least so far as may be necessary or useful for purposes of navigation, and as may not injure or annoy either State or its people; and accordingly it is usual, and often practised, to secure, regulate, and limit such use by treaty or compact of such States; and that neither State can rightfully hinder, obstruct, or in any way impede or annoy such common use and navigation, without the consent of the other.

And your orators charge and insist, that neither of said acts, whether of New Hampshire or Maine, could, without a violation of public law, sanction the erection of any structure or works to interrupt or obstruct the common navigation of said Piscataqua river, even within its own territorial jurisdiction, much less to extend across and land on the opposite bank, without the agreement of the other State; and whatever effect said acts, or either of them, may have as an authority for said structure of said bridge, it is as an agreement or compact between said States, which not having the consent of Congress, said acts are therefore, and for the other reasons aforesaid, utterly void and of no validity for that purpose, being repugnant to and in conflict with the Constitution of the United States, and the laws and treaties thereof made pursuant thereto."

CHS. W. WOODMAN,
Attorney for plaintiffs.

THE STATE OF NEW HAMPSHIRE, *Strafford, ss:*

[L. S.]

To the Proprietors of Portsmouth Bridge, Nathaniel B. March, of Portsmouth, in our county of Rockingham, gentleman, and Lewis Hayes, of Kittery, in the county of York, and State of Maine, yeoman, greeting:

We command you that you appear at our superior court of judicature, to be holden at Gilmanton, in our said county of Strafford, on the second Tuesday of December next, then and there to answer to a bill of complaint exhibited against you by the Town of Dover, in said county of Strafford, and to do and receive what our said court shall thereupon consider in this behalf.

And we further command you, that in the mean time you yield due obedience to all rules and orders which shall be lawfully served upon you relating to said bill of complaint.

Fail not of appearance at your peril.

Witness Joel Parker, esquire, at Dover, the twenty-third day of November, anno domini one thousand eight hundred and forty.

F. COGSWELL, *Clerk.*

ROCKINGHAM, *ss:*

November 23, 1840.

This will certify, that I this day left at the last and usual place of abode of Samuel Lord, the clerk of the within named Proprietors of Portsmouth Bridge, and at the last and usual place of abode of the within named Nathaniel B. March, each a true and attested copy of the within subpœna, with a true and attested copy of this my return endorsed thereon, together with each a copy of the bill of complaint, as attested to by F. Cogswell, the clerk of the court.

G. W. TOWLE, *Deputy sheriff.*

ROCKINGHAM, *ss:*

November 25, 1840.

This will certify, that I this day read the within subpœna to the within named Lewis Hayes in his presence and hearing, and gave him in hand a copy of the bill of complaint as attested to by F. Cogswell, the clerk of the court.

G. W. TOWLE, *Deputy sheriff.*

Fees.—2 services - - - - - -	$0 46
2 copies - - - - - -	2 00
	$2 46

CUSTOM-HOUSE, *Portsmouth, N. H.*

This certifies, that from the records of this office it appears the following named vessels, belonging to Dover, in this district, were licensed during the year 1840, for carrying on the coasting trade, viz:

Schooner	December,	burthen	- -	$55\frac{5}{95}$ tons.
"	Peirce	"	- -	$70\frac{50}{95}$ "
"	Dover Packet	"	- -	$61\frac{77}{95}$ "
"	Wm. Penn	"	- -	$71\frac{37}{95}$ "
"	Lafayette	"	- -	$53\frac{11}{95}$ "
"	Cochecho	"	- -	$73\frac{9}{95}$ "
"	Wm. Tell	"	- -	$75\frac{70}{95}$ "
"	Rob. Rantoul, jr.	"	- -	$74\frac{86}{95}$ "
"	Columbia	"	- -	$61\frac{84}{95}$ "
"	Charles Henry	"	- -	$85\frac{2}{95}$ "
Sloop	Franklin	"	- -	$23\frac{12}{95}$ "

Given under my hand and the seal of the custom-house, the 4th day [L. S.] of August, A. D. 1842.

JNO. N. SHERBURNE, *Collector.*

STATE OF NEW HAMPSHIRE,
Town clerk's office.

DOVER, *November* 15, 1842.

The following is an extract from the records of said town:

STRAFFORD, *ss:*

Notice is hereby given that there will be a public town meeting held at the meeting-house, in Dover, on Monday, the fifth day of September next, at two o'clock, in the afternoon.

* * * * * * * * *

3dly. To see if the town will hear the request of Capt. Steven Evans and others, to see if they will vote to sell some part of the landing called Cochecho landing, such as is thought not necessary for a landing, and if voted, then to choose a committee, and empower them to make a conveyance of such lots as the town shall think can be best spared and not discommode the landing; and if said committee sells any of the landing, the money to be paid at the signing of the deed, and said committee is to return said money to the selectmen of said Dover for the time being, or their successors; the money is to be appropriated to the use of said town.

By order of the selectmen.

THOS. W'K WALDRON,
Town clerk.

Dover, August 27th, 1774.

At a legal town meeting, held at the meeting-house in Dover, on Monday, September 5th, 1774.

Voted 1st. Otis Baker, esq., moderator.

* * * * * * * * *

7thly, voted (on the petition to sell part of the landing) that some of said landing be sold. That Messrs. Stephen Evans, Joshua Wingate, Caleb Hodgdon, Thos. Tuttle, and John Waldron be a committee, and that said committee lot out such part of the landing as they shall think proper to be sold, and make a return of the same to the town at the adjournment of this meeting.

* * * * * * * * *

Then the meeting was adjourned to Monday, ye 19th instant, by a vote of the town, at 2 o'clock, p. m.

Meet according to adjurnment, November 19th, 1774.

* * * * * * * * *

The committee appointed to lot out part of the landing to sell, presented a plan of eight lots that they had laid out, on which—

Voted, that the eight lots in said plan exhibited be sold.

Voted, that a committee be appointed to sell said *said* lots, and that Capt. John Waldron, Capt. Caleb Hodgdon, and Capt. Stephen Evans be the committee to sell lots at public vendue.

Meeting adjourned by vote for half an hour.

Meet according to adjournment. Voted, that said committee sell said

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lots by the first December; that a fourth be paid down to the selectmen, and the other three fourths at six months, when the purchaser shall receive a deed, or the fourth part be forfeited for the use of the town.

Then the meeting was dissolved by the moderator.

This is to notify the legal voters of the town of Dover, that a public town meeting is to be held at the meeting-house in said town, on Monday, the 25th instant, at two o'clock, p. m., for the purpose of voting * * * * * and also to take under consideration the request of sundry persons with respect to letting or selling certain lots on the landing.

By order of the selectmen.

JOHN B'M HANSON,
Town clerk.

Dover, July 9, 1785.

At a legal town meeting, held at the meeting-house in Dover, ye 25th of July, 1785, agreeable to notification:

Voted 1st. John Wentworth, esq., moderator.

* * * * * * * * * *

Voted 4th. That there be a committee of three persons to view the premises with regard to a clause in the notification respecting the sale of lots on the landing, and to make report thereon to this meeting the first Monday of September next.

Voted, Joshua Wingate and John Waldron, esqs., and Mr. John Kielle, be a committee, and report as above.

Voted to adjourn said meeting till Monday, the 5th of September next.

We, the subscribers, do agree and report, that we think it will be for the interest of said town to sell two or three lots on the landing, on the north side of the river, if any person or persons will give the value of said lots; one of the lots lieth on the south side of William Horn's store, bounded northerly on said Horn's store, and fifty feet back from the water, it being thirty feet in width from said Horn's store.

Another lot, lying above Joseph Allen's store, beginning at the river, north 15° west, thirteen rods from the northwesterly corner of said Allen's store, running north 73° east, eight rods; then running north 23° west, eight rods; then running south 65° W., to the river; then by said river to where it began, containing 52 rods.

Another lot, lying between this aforesaid lot and Waldron's grist mill, beginning northerly five rods from this aforesaid lot; this lot to be five rods in width and six rods back from the river. And we agree it will be for the interest of the town to rent out a number of lots on the landing, yearly, to any person that will hire said lots to lay their lumber by themselves, and not have their lumber so intermixed one with another.

There is not to be any building erected on any of these said lots that is rented out.

These said lots are to begin at the river, on the north side of said river, sixteen rods down said river, from the aforesaid lot that lies on the south side of said Horn's store; lotting out as many lots down said river as land will contain, from where they begin to Waldron's land; each lot to be twenty feet in width and forty feet back from the high-water mark; allowing a privilege between every two lots of two rods, to continue for the use of the said town; and would recommend it to the meeting that there be some method *took* by said town to prevent any person from fencing in or erecting buildings on the town's land, or from enjoying any that is erected or in fence, except they come to an agreement with the town for the lands, as the town shall think proper, when convened.

JOSHUA WINGATE,
JOHN KIELLE,
JOHN WALDRON,
Committee.

At a town meeting, held according to adjournment, at the meeting-house, in Dover, on Monday, September 5th, 1785, upon reading and considering the report of the aforesaid committee—

Voted, that the report be received and accepted.

Voted, that the selectmen be a committee to sell and let the aforesaid lots, at public auction, for the benefit of the town.

STATE OF NEW HAMPSHIRE.

This is to notify the legal voters of Dover that a public town meeting will be held at the meeting-house in said town, on Monday, the 15th day of December next, at one o'clock, p. m.

* * * * * * * *

By order of the selectmen.

JOHN B. HANSON, *Town clerk.*

Dover, Nov. 29th, 1788.

Also, at the above town meeting, to hear the request of a number of the inhabitants of said town, to see if they will vote to sell some vacant land on the landing to pay for the bell, and act thereon as they think proper.

By order of the selectmen.

JOHN B. HANSON, *Town clerk.*

Dover, December 6th, 1788.

December 15th, 1788.—At a legal town meeting held at Dover, agreeable to notification—

* * * * * * * *

Voted, first, that Peter Hodgdon be moderator.

2d. * * On hearing the request of a number of the inhabitants respecting the bell, voted to sell land on the landing sufficient to pay for the bell and the expense attending the same.

Voted, that the selectmen be a committee to lot out and sell so much of said land as will be sufficient to pay for said bell and the expense thereof.

Voted, to sell the lot before Capt. Horn's store.

Voted, to sell a lot north of Benjamin Evan's house.

Voted, to sell a lot before Col. James Calef's house.

Voted, to sell the lot by the end of the bridge, where John P. Gilman lays his lumber.

Voted, that in case the first three lots are not sufficient to pay for the bell and expenses, the selectmen sell the four lots above mentioned, and no more. * * * * * *

At a town meeting holden at Dover, March 28, 1791, by adjournment from December 13th and 27th, 1790, the matter respecting the lots of land on the landing being taken into consideration as presented by Joshua Wingate, esq., John Waldron, esq., and Mr. John Kielle, a committee, the report of whom being put—

Voted, to sell the two lots of land on the west side of the river only.

Voted, that the two lots be sold at public vendue, and that the selectmen for the time being be a committee for that purpose, and give deeds thereof. * * * * * * *

Then the meeting was dissolved.

NATH'L COOPER, *Town clerk.*

A true extract from the record.

Attest: GEO. PIPER, *Town clerk.*

This cause was entered at the superior court of judicature, holden at Gilmanton, within and for the county of Strafford, on the second Tuesday of December, A. D. 1840, and duly continued from term to term, unto the term of said court, held at Exeter, in the first judicial district, on the third Tuesday of July, A. D. 1845; and the cause having been argued for the counsel for the parties, and fully heard by the court, is continued nisi.

SUPERIOR COURT OF JUDICATURE,
Second judicial district.

At an adjourned term, held on the fourth Tuesday of August, A. D. 1845, in the matter of the town of Dover vs. the Proprietors of Portsmouth Bridge, pending in the county of Strafford, and continued "nisi," it is now ordered, that the amendment to the plaintiff's bill be allowed, and that the bill be dismissed with costs.

J. PARKER.

To the clerk of the superior court of judicature, for the county of Strafford.

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

The foregoing is a true copy of the record, and of all proceedings,

and of the final order and decree of the court in the cause aforesaid in the superior court of judicature of said State.

In witness whereof I have hereunto set my hand and affixed [SEAL.] the seal of said court.

JOHN H. SMITH,
Clerk of the superior court of judicature,
for the county of Strafford.

SUPREME COURT OF THE UNITED STATES.

THE TOWN OF DOVER, plaintiffs in error,
vs.
THE PROPRIETORS OF PORTSMOUTH BRIDGE, Nathaniel B. March and Lewis Hayes, defendants.

The said Town of Dover say, that in the record and process, and also in the passing of the final decree in the suit by bill in equity, which was before the superior court of judicature of the State of New Hampshire, whereof mention is made in the writ of error in this cause, there is manifest error in this, to wit, that it is ordered and decreed that said bill be dismissed with costs; whereas the decree ought to have been given, that the said bill be retained, and that said defendants be enjoined and restrained from obstructing the navigation of Piscataqua river, in the port and harbor of Portsmouth, and from sinking rocks or stones in said river, at or near said bridge, and from keeping up, supporting, and continuing said bridge; and that said Proprietors should abate and remove the same; and that said complainants should recover costs against the defendants; therefore in that there is manifest error.

And there is also error in this, that whereas it manifestly appears in said record and proceedings, that the bridge complained of, erected by said Proprietors, straitens, annoys, and obstructs the port and harbor of Portsmouth therein mentioned, and obstructs the navigation therein, and also impedes and annoys the navigation, and access, egress, and regress of ships and vessels passing on the navigable waters of said river, between the Town of Dover, the same being a legal port of delivery of the United States, and the sea. And that the further operations, which it appears by said bill, and the answer and proofs, and admissions of the defendants in said cause, were projected, threatened, and intended by said Proprietors for the maintaining and keeping up said bridge, would greatly and much more impede, obstruct, and annoy said navigation, and the passage of vessels in said harbor and port of Portsmouth, between said port of Dover and the sea, in a manner contrary and repugnant to the just and true construction and intent of the Constitution and laws of the United States, to the special damage of the said complainants. Nevertheless, the said court wholly refused and neglected to grant any relief, as prayed for in the premises, but admitted and allowed certain statutes of the States of New Hampshire and Maine, which are set forth in the answer of the defendants in said

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cause, as a sufficient defence against such relief; and thereupon ordered and decreed said bill to be dismissed with costs; therefore in that there is manifest error.

And they pray that the decree aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that they may be restored to all things which they have lost by occasion of the said decree, &c.; and that the said defendants may rejoin to the errors aforesaid; and that the court here may proceed to the examination, as well of the record and process aforesaid, as of the said matters assigned for error.

C. W. WOODMAN,
Att'y for plaintiffs in error.